

IMPROVEMENTS TO THE ENERGY COMMISSION'S ENERGY FACILITY LICENSING PROCESS



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ENERGY FACILITY LICENSING PROCESS IMPROVEMENTS

I. INTRODUCTION

This report evaluates the California Energy Commission's (Commission) energy facility licensing process in a restructured electricity industry. It recommends procedural, administrative, and statutory measures intended to make timely decisions on new energy facilities in California while protecting environmental quality and ensuring public participation.

As a result of its evaluation, the Commission concludes that the current energy facility licensing process is fundamentally sound and provides an efficient method for licensing large power plants and related transmission lines in California. It produces timely, legally sound decisions in an open, public process.

Improvements in the process, however, are needed. Several improvements are described in this report and should be implemented through legislative, regulatory, and procedural actions. Others need to be explored further as the competitive market unfolds and the Commission has more experience working with applications for merchant facilities and communities where these projects are proposed.

Three of the more challenging issues raised during this evaluation remain open – dealing with local land use determinations, proposing an alternative to the Small Power Plant Exemption process, and noticing of meetings. The Commission and the stakeholders have agreed to continue working to resolve these issues.

Objectives of a Sound Licensing Process

While much of the discussion during the evaluation revolved around specific concepts, several objectives of a sound licensing process emerged. These included:

- Fair and consistent review applied to all applicants
- Open and informal communication
- Ability for the public to participate in and influence the process
- Thoughtful consideration of public input
- Objective analysis
- Adequate time for all agencies, parties and the public to review the applicant's proposal
- Timely decisions
- Complete environmental documentation for local and state agency consideration

- Complete analyses prior to hearings
- Decisions supported by a complete and factual hearing record
- Adequate resources to produce quality and timely analyses

The Commission considered these objectives in performing this evaluation and is committed to continually evaluating its process as the restructured electricity industry unfolds.

California's Energy Facility Licensing Process

The State's electrical system is a complex, integrated system, which is comprised of approximately 1,000 power plants, 2,500 substations, and 40,000 miles of bulk transmission lines within California, as well as other facilities located in the Western United States and Canada. Within California, five investor-owned utilities, 26 municipal utilities, four irrigation districts, and five rural electric cooperatives supply electricity to customers.

The Legislature has long recognized that the State's electricity system is essential for assuring a good quality of life for its citizens, as well as sustaining its economy. They have also clarified that it is the responsibility of the State to ensure a reliable supply of electricity consistent with public policy goals of protecting public health and safety, promoting the general welfare and protecting environmental quality (Pub. Resources Code, § 25001).

In the mid-1970s, the Legislature established the State's energy facility licensing process, in recognition of the importance of electrical energy to the people and economy of California. This process was designed to coordinate all government reviews, provide time-certain and legally sustainable licensing decisions that protect the public and the environment, as well as facilitate public participation.

In 1996, the Legislature restructured the State's electricity industry, moving to a competitive market for electrical generation. Although restructuring changed the owners and operators of the State's power plants, it did not diminish the Legislature's commitment to environmental protection and public participation in licensing.

With the passage of Senate Bill 110 in 1999, the Legislature recognized that power plant owners bear the risk to recover their investments in the restructured electricity market. They emphasized that California must continue to protect environmental quality and site new power plants to ensure electricity reliability, improve the environmental performance of the current electricity industry and reduce consumer costs (Pub. Resources Code, § 25009).

Senate Bill 110 Required Evaluation of the Licensing Process

Senate Bill 110 directed the Commission to evaluate its licensing process and recommend “administrative and statutory measures” to ensure the timely construction of new power plants in the restructured electricity market [Pub. Resources Code, § 25543 (b)]¹. It asked the Commission to include an evaluation of four topics:

1. Potential process efficiencies associated with required hearings, site visits, and documents.
2. Impacts on both process efficiency and public participation of restrictions on communications between applicants, the public, and staff or decision-makers.
3. Means for improving coordination with the licensing activities of local jurisdictions and participation by other State agencies.
4. Organizational structure issues, including the adequacy of the amounts and organization of current technical and legal resources [Pub. Resources Code, § 25543 (b)].

In performing its evaluation, the Commission conducted a workshop on improvements to the siting process; held two hearings on specific legislative, regulatory and procedural concepts, and held a Commission hearing on the Committee draft report. It also considered input from debriefings of licensing applicants and other agencies, and reviewed the transcripts and notes of the Senate Budget Subcommittee #5 and Senate Bill 110 hearings held last legislative session.

Summary of Recommendations for Improving the Licensing Process

In response to the Legislature’s direction, the Commission evaluated its licensing process regarding efficiency improvements; communications and public participation; agency coordination; and organization and resources. The Commission also considered changes in licensing jurisdiction as they affect the effectiveness and efficiency of energy facility licensing.

The Commission focused its recommendations on opportunities to improve the efficiency of its process using existing administrative and statutory authority. Only where more substantive changes or budgetary approvals are required does the Commission recommend legislative or regulatory action.

¹ Adapting its licensing process to respond to the changing needs of the changing electricity industry is not new to the Commission. Since its inception in the mid-1970s, the Commission has continued to modify its licensing process through procedural, regulatory and statutory changes to improve its efficiency and respond to the needs of both project developers and the public. What began as a 36-month, two-step licensing process, including the preparation of a separate EIR, has, for virtually all new generation facilities, evolved into a 12-month process which meets the requirements of the California Environmental Quality Act, ensures public participation and protects both the public and the environment.

Opportunities for improving the efficiency of the licensing process include:

- modifying the information requirements for facility applications,
- requiring site control,
- instituting specific process timeframes,
- allowing schedule adjustments for evaluating applicant-driven project changes, and
- electronic filing of information.

Communication between all participants can be improved by clarifying the noticing requirements. The Commission is continuing to discuss how best to change the regulations to ensure flexibility and the open exchange of information while fostering public participation.

State and local agency participation in the licensing process can be improved by developing Memoranda of Understanding with other agencies regarding the scope and timing of their participation in the licensing process and establishing a specific timeframe for other agencies to file comments. Other recommendations include avoiding overlap between agency and staff analyses, improving application filing requirements (data adequacy) to support agencies' information needs, and providing adequate time for agencies to evaluate applicant-driven project changes.

In terms of structural changes, the Commission recommends working with stakeholders to develop a replacement to the Small Power Plant Exemption process. The Commission recommends continuing its certified regulatory program rather than returning to a strict California Environmental Quality Act (CEQA) process which uses Environmental Impact Reports (EIR).

Consistent with its previous position, the Commission also recommends that state permitting of electricity generation and transmission facilities be consolidated in one agency. Consolidation would not only result in efficiency improvements but would facilitate consideration of alternatives and public participation.

Based on its evaluation, the Commission concludes that additional resources are required to review the increased number of licensing applications triggered by restructuring and to carry out the subsequent compliance monitoring of approved facilities. Any "surplus" resources created by the recent elimination of the "need analysis" in the licensing process have already been redirected or eliminated. The Commission has not taken a position on whether fees should be imposed on applicants for licensing but has concerns regarding how those fees would be managed and its potential long-term impact on the viability of the licensing program.

Issues the Commission did not resolve were local agency needs for CEQA documentation, an alternative to the Small Power Plant Exemption process, and

noticing of meetings. The Commission and stakeholders have agreed to hold further discussion to resolve these issues.

Next Steps

The Commission will make many of the changes identified above procedurally or through changes in its regulations. As allowed by Senate Bill 110, the Commission has initiated an Order Instituting Rule Making to immediately adopt many of the regulatory changes recommended in this report.

Organization of the Report

The report is organized into the following four sections:

Section 1, “Electricity Restructuring Implications for Energy Facility Licensing,” discusses the overall effects of restructuring on energy facility licensing.

Section 2, “California’s Energy Facility Licensing Process,” provides background information on energy facility licensing. This discussion includes an overview of licensing jurisdiction in the State, the Commission’s licensing process, and further information on the four topics required to be addressed by Senate Bill 110.

Section 3, “Licensing Process Evaluation” evaluates the Commission’s energy facility licensing process; this evaluation is organized around the four topics outlined in Senate Bill 110. Section 3 identifies and discusses several issues raised during the evaluation process, recommends specific actions, and provides a rationale for each recommendation.

Section 4, “Conclusions and Recommendations” provides a summary of the recommendations.

Appendix A provides a list of those individuals that participated in the workshop or hearings held as part of the process or that provided written comments.

II. ELECTRICITY RESTRUCTURING IMPLICATIONS FOR ENERGY FACILITY SITING

Restructuring has resulted in numerous changes in the electricity industry. This section briefly discusses some of the changes that are emerging in the licensing of energy facilities.

The objectives of Assembly Bill 1890 (Stats. 1996, Ch. 854) were to provide Californians with "...competitive, low cost and reliable electric service..." [Section 1 (a)]. In restructuring the electricity industry, the Legislature intended that private initiative and market signals, rather than central planning and the utilities' "obligation to serve", be used to meet future electricity demand. Under the new statutory scheme, private developers propose when and where to build "merchant" energy facilities and bear the risk of their facilities' successes or failures.

Resolution of the path to restructuring in California coupled with increasing demand for electricity and the end of the electricity supply surplus¹, has resulted in considerable interest among private firms in building new power plants in California. As a consequence, the Commission has received and expects to continue receiving a significant number of new licensing applications (Table 1).

In the restructured electricity industry there is no guarantee that a licensed energy facility will be built, nor of how long it will operate or where its electricity will be sold. Private developers and investors will decide whether the electricity market, in California or other areas served by the interconnected transmission system, will economically support their projects' construction and operation. Depending on the electricity market and congestion on the transmission system, electricity generated by a power plant could serve local loads, provide support to the local transmission system, or be used outside California.

Restructuring did not exempt new energy facilities from meeting federal, State, or local environmental, public health or land-use requirements. Proposed power plants and transmission lines must continue to comply with these requirements and to mitigate all significant environmental impacts, except in unusual circumstances. It also did not eliminate full disclosure of the implications of these projects or the provision for public participation in the decision-making process.

Restructuring, as clarified by Senate Bill 110, changed one aspect of the State's energy facility licensing process. It removed the requirement that the Commission find conformity of the proposed project with the "integrated assessment of need" previously

¹ In its July, 1999 report entitled High Temperatures and Electricity Demand, An Assessment of Supply Adequacy in California, the Commission raised concerns over the adequacy of the state's electricity supplies during periods of prolonged peak demand in extended summer heat spells.

Table 1
APPROVED, CURRENT AND FUTURE POWER PLANT SITING CASES
FOLLOWING ELECTRICITY RESTRUCTURING

	Project	Applicant	Size (MW)	Estimated Cap. Cost	Location
Approved Siting Cases					
1	Sutter Power (97-AFC-2)	Calpine	500	\$300 million	Sutter Co.
2	Pittsburg (98-AFC-1)	Enron	500	\$300 million	Contra Costa Co.
3	La Paloma (98-AFC-2)	U.S. Generating Co.	1,043	\$500 million	Kern County
4	Delta Energy (98-AFC-3)	Calpine & Bechtel	880	\$400+ million	Contra Costa Co.
Current Siting Cases					
5	High Desert (97-AFC-1)	Inland & Constellation	720	\$350+ million	San Bernardino Co.
6	Sunrise Cogen (98-AFC-4)	Texaco Global Gas & Pwr	320	\$250 million	Kern County
7	Elk Hills (99-AFC-1)	Sempra & Oxy	500	\$250 million	Kern Co.
8	Three Mountain (99-AFC-2)	Ogden Power Pacific	500	\$300 million	Shasta Co.
9	Metcalf (99-AFC-3)	Calpine & Bechtel	600	\$300 million	Santa Clara Co.
10	Moss Land Repwr (99-AFC-4)	Duke Energy	1,060	\$500 million	Monterey Co
11	Otay Mesa (99-AFC-5)	PG&E Generating Co.	510	\$300 million	San Diego Co.
12	Pastoria (99-AFC-7)	Tejon Ranch	960	\$300 million	Kern County
13	Blythe Energy (99-AFC-8)	Summit Energy Group	400	\$250 million	Riverside Co.
14	Midway-Sunset (99-AFC-9)	ARCO Western Energy	500	\$300 million	Kern Co.
15	Contra Costa Repwr (00-AFC-1)	Southern Energy	530	\$300 million	Contra Costa Co.
16	Mountainview (San Bernardino Repwr) (00-AFC-2)	Thermo Ecotek	1056	\$500 million	San Bernardino Co.
17	Nueva Azalea	Sunlaw Cogen Partners I	800	\$450 million	Los Angeles Co.

	Project	Applicant	Size (MW)	Estimated Cap. Cost	Location
Future Siting Cases					
18	Potrero Repwr 1/	Southern Energy	520	\$300 million	San Francisco Co.
19	Combined Cycle 2/		560	\$300 million	S.F. Bay Area
20	Morro Bay Repwr.	Duke Energy	600	\$300 million	San Luis Obispo Co.
21	Antelope Valley 1/	AES	1000	\$500 million	Kern Co.
22	Combined Cycle 2/		99	\$50 million	Kings Co.
23	Bay Area Project 2/		600	\$300 million	Alameda Co.
24	South City 1/	AES	550	\$300 million	San Mateo Co.
25	Peaker 2/		168	\$125 million	Imperial Co.
26	Combined Cycle 2/		1000	\$500 million	Orange Co.
27	Long Beach 1/	Enron	500	\$300 million	Los Angeles Co.
28	Combined Cycle 2/		500	\$300 million	Imperial. Co.
29	Combined Cycle 2/		1000	\$500 million	Los Angeles Co.
30	Redondo Beach Repwr 1/	AES	1000	\$500 million	Los Angeles Co.
31	Combined Cycle 2/		400	\$300 million	Kern County
32	Combined Cycle 2/		500	\$300 million	South Coast AQMD
33	Combined Cycle 2/		520	\$300 million	Contra Costa Co.
34	Combined Cycle 2/		?	?	San Deigo Co.
35	Combined Cycle 2/		?	?	Kern County
36	Combined Cycle 2/		800	\$450 million	Riverside County
37	Combined Cycle 2/		800	\$450 million	Los Angeles Co.
38	Combined Cycle 2/		500	\$300 million	S.F. Bay Area
39	Combined Cycle 2/		130	\$65 million	Kern County
40	Combined Cycle 2/		500	\$300 million	S.F. Bay Area
41	Combined Cycle 2		500	\$300 million	Central Valley
42	Combined Cycle 2/		500	\$300 million	S.F. Bay Area
43	Combined Cycle 2/		800	\$450 million	Los Angeles Co.

required by Public Resources Code, § 25523 (f). Consequently, it focused the Commission's approval on two primary concerns:

1. How the proposed facility is designed, sited and operated to protect environmental quality and assure public health and safety [Pub. Resources Code, § 25523 (a)], and
2. Whether the project complies with all relevant federal, state, and local legal requirements [Pub. Resources Code, § 25523 (d)].

To respond to these concerns, during the licensing process the Commission evaluates project specific and cumulative environmental, public health and safety, socioeconomic, community, and reliability implications of a proposed energy facility. It seeks input from other agencies on whether that project complies with applicable laws, ordinances, regulations and standards. The Commission also establishes conditions related to each project's construction, operation and eventual decommissioning, and subsequently monitors compliance with these conditions.

The Commission, however, is not limited to addressing only these concerns during a licensing proceeding. In the restructured electric industry, the Commission retains the authority to override applicable legal requirements if it "determines that such facility is required for public convenience and necessity and that there are not more prudent and feasible means of achieving such public convenience and necessity [Pub. Resources Code, § 25523 (c)].

Although the "need assessment " for individual projects was eliminated by Senate Bill 110, the Legislature made it explicit that in making overriding determinations the Commission "...shall consider the entire record of the proceeding, including, but not limited to, the impacts of the facility on the environment, consumer benefits, and electric system reliability (Pub. Resources Code, § 25525)". It is likely to be more difficult for the Commission to make these override findings unless the proposed project provides some unique and demonstrable public benefit.

Assembly Bill 1890 also created the California Independent System Operator to operate and ensure the reliability of the state's electric transmission system. The Commission normally requests the Independent System Operator to participate in the licensing process and provide comments on the implications of proposed energy facilities on transmission system operation and reliability.

III. LICENSING ENERGY FACILITIES IN CALIFORNIA

This section provides an overview of licensing energy facilities in California and discusses the Energy Commission's process in more detail. Licensing energy facilities, including power plants and electrical transmission line additions, can be complex and involve multiple agencies. For power plants, the size, type and ownership of the proposed project determine which agency has permitting authority.

For transmission lines, the questions of what licenses are required and who will be the lead agency can be more difficult to answer because transmission lines typically cross or affect numerous local, State and federal jurisdictions. Further licensing confusion results if an investor-owned utility, municipal utility, federal agency, or a private company jointly propose the line.

Table 2 describes the current licensing jurisdiction for generation and transmission projects in California.

ENERGY COMMISSION'S LICENSING PROCESS

The Energy Commission's licensing process was established in the 1970s. The Commission has jurisdiction over thermal power plants with a generating capacity of at least 50 megawatts and all related facilities. Related facilities typically include transmission lines, fuel lines, water lines and access roads.

Initially the Commission's process consisted of two steps lasting a total of three years. The first step, the Notice of Intention, provided a broad look at several sites and evaluated the acceptability and relative merit of the different proposals [Pub. Resources Code, § 25514 (d)].

The second step, the Application for Certification, focuses on developing provisions for a proposed facility to be "designed, sited and operated to protect the environment and assure public health and safety [Pub. Resources Code, § 25523 (a)]." As the lead agency under CEQA, the Commission also discloses potential environmental impacts, describes mitigation requirements and evaluates alternatives during the Application for Certification process [Pub. Resources Code, § 25519 (c)].

Based on current law, the Commission now reviews most projects directly in the Application for Certification process. The Commission's Application for Certification provides a unique, coordinated process, in which local, State, and to the extent federal law allows, federal laws and standards are considered and addressed in a single license. If approved, the Commission monitors projects until they are decommissioned to ensure they comply with all licensing requirements.

Table 2
ENERGY FACILITY JURISDICTION IN CALIFORNIA

POWER PLANTS

Technology	<50 MW	50+ MW
Natural Gas	MUNI or LOCAL ^a	Energy Commission ^e
Oil	MUNI or LOCAL ^a	Energy Commission ^e
Coal	MUNI or LOCAL ^a	Energy Commission ^e
Nuclear	MUNI or LOCAL ^a	Energy Commission ^e
Geothermal	MUNI or LOCAL ^a	Energy Commission ^e
Solar Thermal	MUNI or LOCAL ^a	Energy Commission ^e
Solar Photovoltaic	MUNI or LOCAL ^a	CPUC, MUNI or LOCAL ^a
Hydroelectric	SWRCB & FERC	CPUC, SWRCB & FERC
Wind	MUNI or LOCAL ^a	CPUC, MUNI or LOCAL ^a

TRANSMISSION LINES AND SUBSTATIONS

Project Type	< 50 kV	50 to 200 kV	over 200 kV
Associated with power plant under Energy Commission jurisdiction.	Energy Commission	Energy Commission	Energy Commission ^e
Investor-Owned Utility proposed ^b	Regulated but exempt	CPUC ^c	CPUC ^d
Muni proposed ^b	Muni	Muni	Muni
Independent proposed ^b	Local	Local	Local

CPUC - California Public Utilities Commission
 FERC - Federal Energy Regulatory Commission
 IOU - Investor-Owned Utility
 LOCAL - Local Agency
 MUNI - Municipal Utility
 SWRCB - State Water Resources Control Board

^a Jurisdiction depends on applicant; Municipal Utility for MUNI, and Local Agency for Independent Developer.

^b Line not associated with power plant under Energy Commission jurisdiction.

^c CPUC Permit to Construct process

^d CPUC Certificate of Public Convenience and Necessity process

^e IOU projects also require a Certificate of Public Convenience and Necessity from the CPUC

Projects between 50 and 100 megawatts, that are not expected to cause any significant environmental impacts, can be exempted from the Commission's licensing through the Small Power Plant Exemption process. For these projects, the Commission serves as the lead agency but local and state agencies issue separate permits.

PROCESS EFFICIENCY

Senate Bill 110 requires the Commission to evaluate ways to improve the efficiency of the Commission's licensing process, including its hearings, site visits, and documents.

The Commission typically holds hearings during the licensing process for three purposes:

1. to provide or obtain information and comments;
2. to discuss procedures and schedule; and
3. to establish a factual, evidentiary basis for the decision.

The number and length of the hearings varies on each project. They depend on the number and complexity of issues and the degree of agreement on these issues. Most of the hearings are held in the community nearest the proposed project and many are held in the evening so the public can attend.

Hearings conducted to obtain or provide information or to discuss procedures and schedule are informal, allowing an open exchange of material between the Committee¹ on a project and the various participants.

Hearings held to establish the basis for the Commission's decision are more formal and follow rules of evidence. Expert witnesses present testimony and are cross-examined at these hearings. Public comment is also allowed and included in the record. These hearings are conducted in this manner since Commission decisions are to be based on the record and reflect findings of fact and conclusions of law.

Site visits occur throughout the process to educate the decision-makers and various participants about the project and its surrounding environment. Commission staff and other agencies also use site visits to collect data, identify potential impacts, assess mitigation measures and evaluate alternatives.

Several documents are prepared during the Commission's siting process. They disclose the environmental and other implications of the project, propose mitigation measures and conditions of approval for the license, and establish the basis for the Commission's decision. The principal documents are:

¹ A Committee of two Commissioners is assigned to preside over every siting case. The Committee is responsible for managing the case schedule, conducting hearings to receive comments and evidence, and recommending a decision to the full Commission.

- Application for Certification - The project developer files this document which describes the project, provides basic data for use by the Commission and other agencies, identifies the impacts expected and describes recommended mitigation measures.
- Issues Identification Report - The Commission staff prepares this report in the first 30 days of the process. The report describes the anticipated technical, policy, and procedural issues that may arise during the case.
- Staff Assessments – The Commission staff prepares a Preliminary and Final Staff Assessment that describe the existing environmental conditions, the proposed project, applicable laws and regulations, impacts, mitigation measures, alternatives, and recommended conditions of approval. The Preliminary Staff Assessment serves as a focal point for discussions at workshops on the issues by all the participants while the Final Staff Assessment presents the staff's final recommendations.
- Agency Reports – Other government agencies participating in the licensing process prepare reports that summarize their comments and recommendations on the project. The primary reports are the Determination of Compliance prepared by the local air pollution control district and the Biological Opinion prepared by the Department of Fish and Game.
- Written Testimony –The applicant and intervenors prepare written testimony on their positions that they present at the evidentiary hearings. The Final Staff Assessment serves as the staff's written testimony.
- Presiding Member's Proposed Decision – The Commission Committee prepares this document that presents recommended findings and conclusions regarding the proposed project and proposed conditions of approval.
- Final Decision – The Final Decision is prepared by the Commission Committee and is approved or modified by the full Commission. It provides the basis for the Commission's decision on the project and identifies conditions for the project's construction, operation and decommissioning.

PUBLIC PARTICIPATION AND COMMUNICATION

The licensing process provides for open, public participation in decision-making. The Commission's regulations require that "all hearings, presentations, conferences, meetings, workshops and site visits shall be open to the public." (Cal. Code Regs., tit. 20, § 1710); and that "all meetings shall be noticed..." (Cal. Code Regs., tit. 20, § 1718).

Notice must be given no less than 10 days in advance of a hearing, meeting, workshop, or site visit. This allows the public to be aware of and to participate in the process. It also ensures that discussions on substantive issues among the Commission staff, applicant and other parties to the proceeding are conducted in public forums. Some process participants feel that noticing constrains communication and lengthens the process.

To further facilitate public involvement, the Legislature created the position of Public Advisor within the Commission. The Public Advisor is appointed by the Governor with the responsibility of insuring “ that full and adequate participation by all interested groups and the public at large is secured in ... site and facility certification... (Pub. Resources Code, § 25222).”

The Public Advisor ensures that adequate notice is provided, advises individuals and groups on how best to participate in the Commission’s process and recommends changes in the process to ensure public participation. The Public Advisor is, however, specifically precluded from serving as an advocate for any party (Cal. Code Regs., tit. 20, § 2554).

Most members of the public are casual participants in the process that sign up on the Commission’s mailing list to receive information about the project and the proceedings. Some attend and provide information and comments at hearings and workshops or offer written comments on documents prepared by the Commission staff or Committee. Others, individually or collectively, become intervenors. As a formal party, they offer testimony and cross-examine witnesses at hearings and participate extensively throughout the process.

COORDINATION WITH OTHER AGENCIES

The Commission is the lead agency under CEQA for projects it reviews [Pub. Resources Code, § 25519 (c)]. It is responsible for complying with CEQA requirements within the context of its certified regulatory program.

The Commission’s license is “in lieu of any permit, certificate or similar document required by any state, local or regional agency or federal agency to the extent permitted by federal law (Pub. Resources Code, § 25500).” To accomplish this during the licensing process, the Commission seeks to coordinate with and consider the comments and recommendations of all state, local and federal agencies whose laws, ordinances, regulations or standards apply to a project.

During the licensing process, the Commission staff works with other agencies to reduce duplication, ensure timely participation, and consolidate all licensing requirements. It requests other agencies to ensure there is sufficient information in the application to evaluate a project’s compliance with applicable legal requirements and make recommendations. It also asks other agencies to participate in workshops and present

their comments and recommendations, either to the Commission staff for inclusion in the staff's analysis, or at hearings. The Commission makes these same requests of the Independent System Operator.

To better coordinate activities and minimize duplication in the licensing process, the Commission has entered into Memoranda of Understanding with the Air Resources Board, Department of Toxic Substance Control, Water Resources Control Board and the Independent System Operator. The Commission is working on a similar Memorandum with the Department of Fish and Game.

The Commission can override any State, local, or regional standards, ordinances or laws if it determines the proposed facility: "...is required for public convenience and necessity and that there are not more prudent and feasible means of achieving such public convenience and necessity." (Pub. Resources Code, § 25525) Senate Bill 110 augmented this language by stating that in making an override determination the Commission is to consider "...the entire record of the proceeding, including, but not limited to, the impacts of the facility on the environment, consumer benefits, and electric system reliability. The Commission has used its override authority only twice.

ENERGY FACILITY LICENSING TRENDS

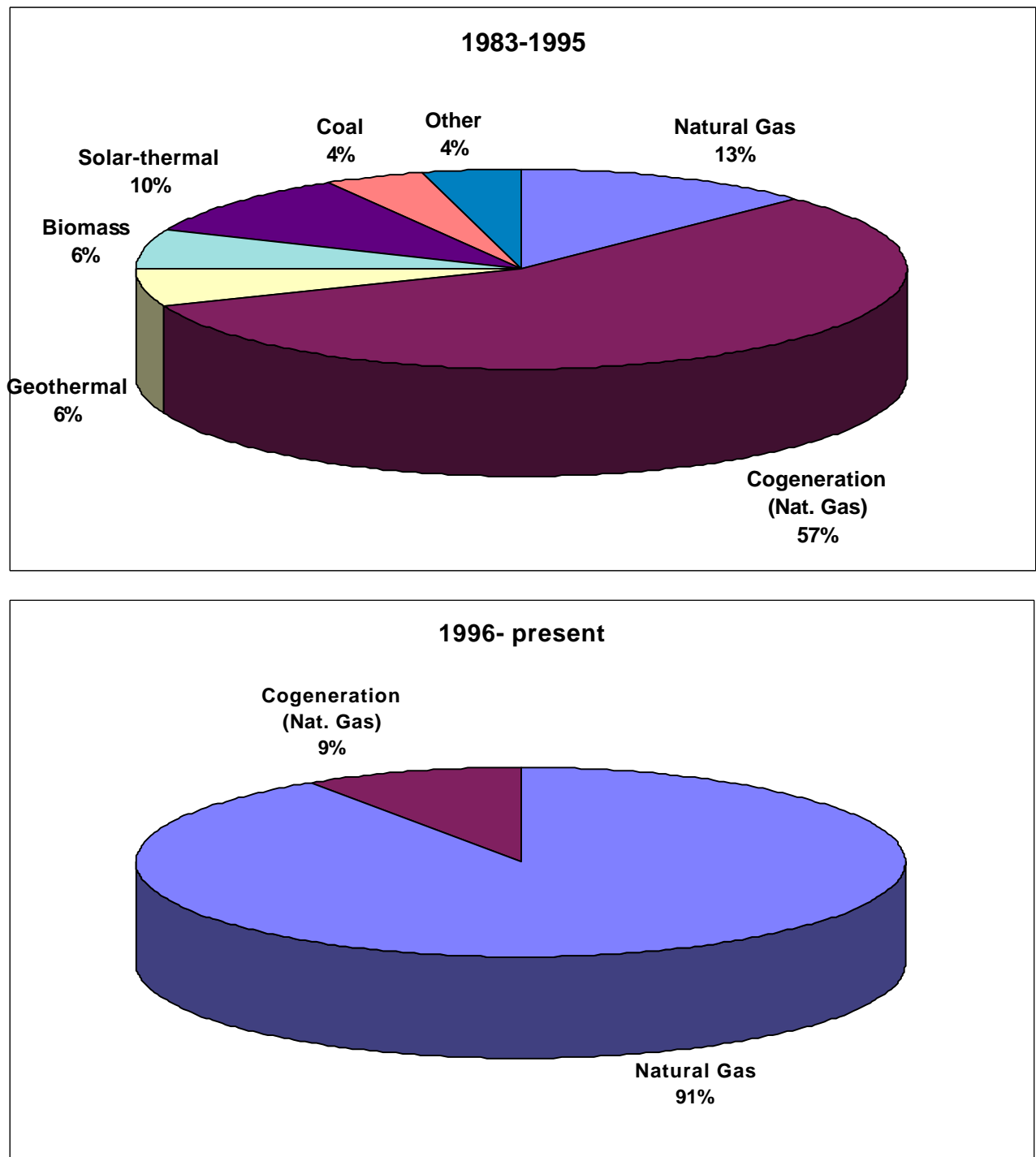
Since 1996 and the initial restructuring of the electricity industry, the Commission has received 18 license applications. All of these have been for gas-fired combined cycle or cogeneration power plants, ranging in size from 320 to 1,090 MW, and associated transmission lines (see Table 1). Compared with previous proposed projects, these merchant projects are larger and less diverse in terms of fuel type than those filed previously with the Commission (Figures 1 and 2).

Since restructuring, the Commission has approved four of the 18 projects with a total generating capacity of 2,923 megawatts. The capital cost of these 4 projects is \$1.5 billion. They will result in 1,411 construction and 99 operation jobs. The average permitting time for these projects has been 13 months. The Commission is reviewing the other project applications.

While the proposed projects are located in all regions of California, a significant number are in the San Francisco Bay area and the southern San Joaquin Valley. They are typically located close to existing transmission lines and natural gas pipelines. Besides participating in the California market, many of the projects are located to sell electricity to southern Nevada, Arizona, northern Mexico and the Pacific Northwest.

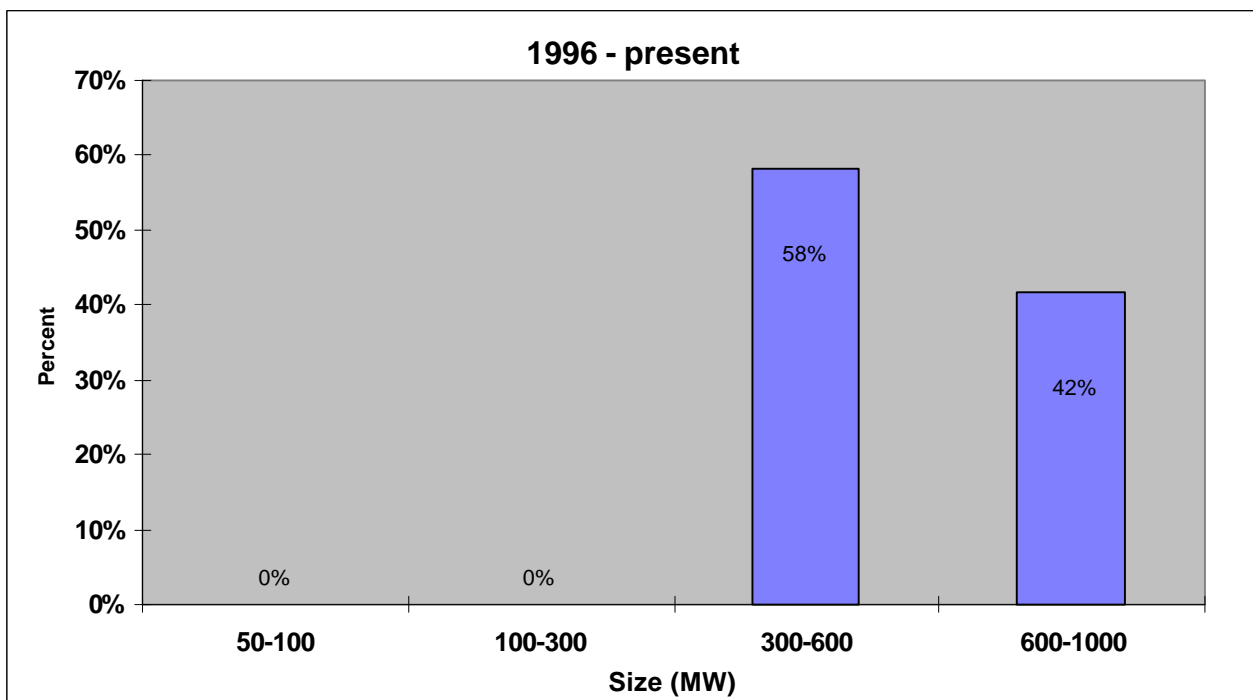
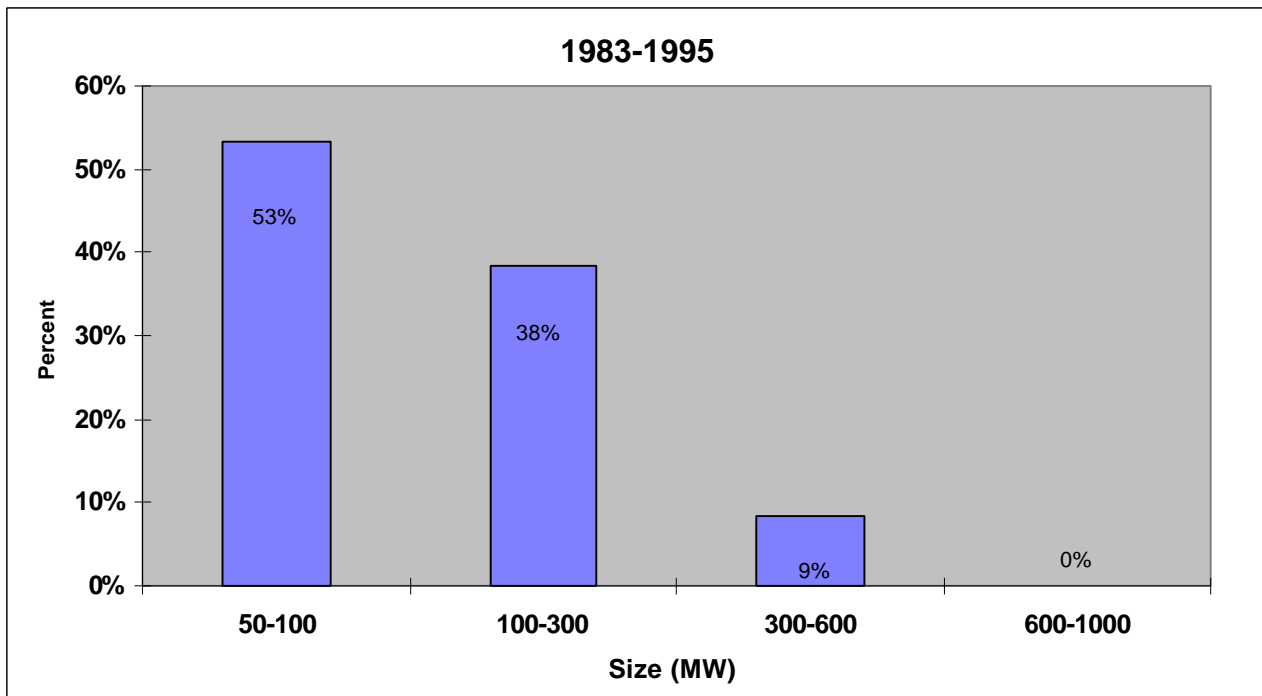
The most significant issues these projects are encountering are the availability of air pollutant emission offsets and water supplies, and potential local opposition. Projects located in undeveloped areas often must deal with endangered species issues while those located in urban areas experience issues with land use requirements and public opposition.

Figure 1
POWER PLANT FUEL TYPE COMPARISON¹



¹ Includes all projects submitted to the Energy Commission for review.

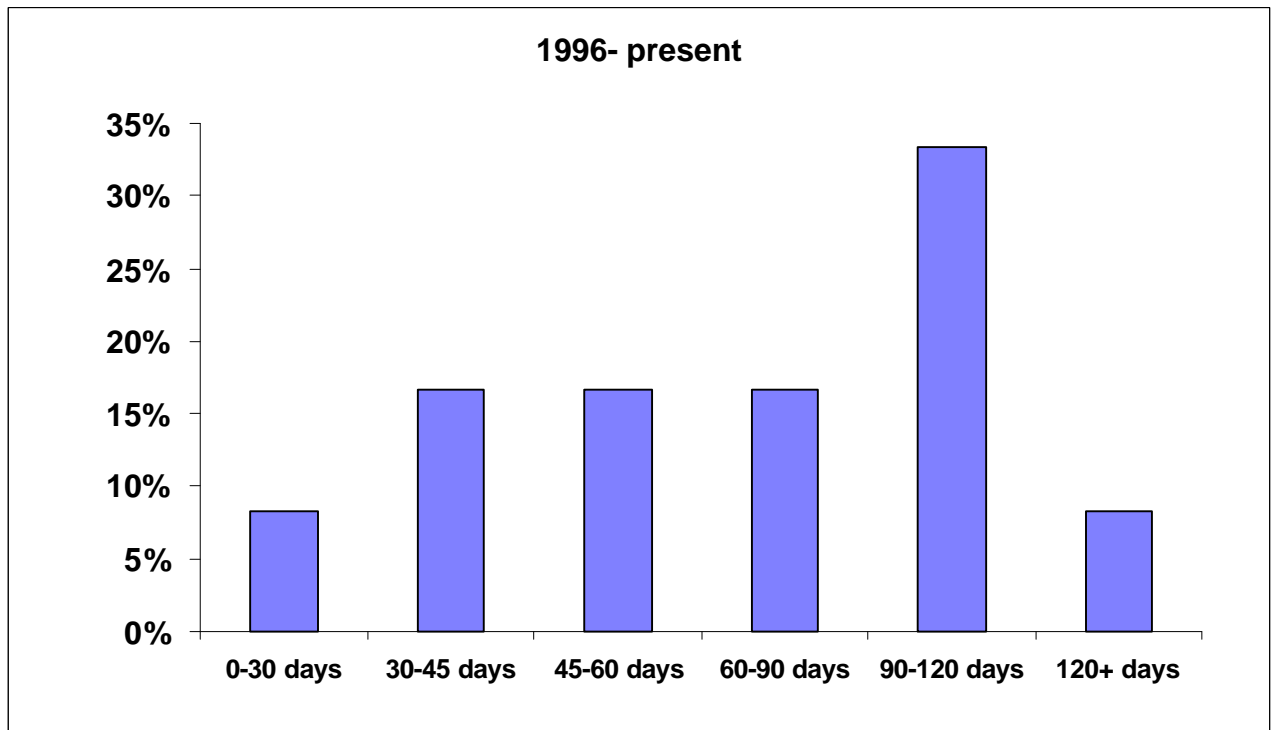
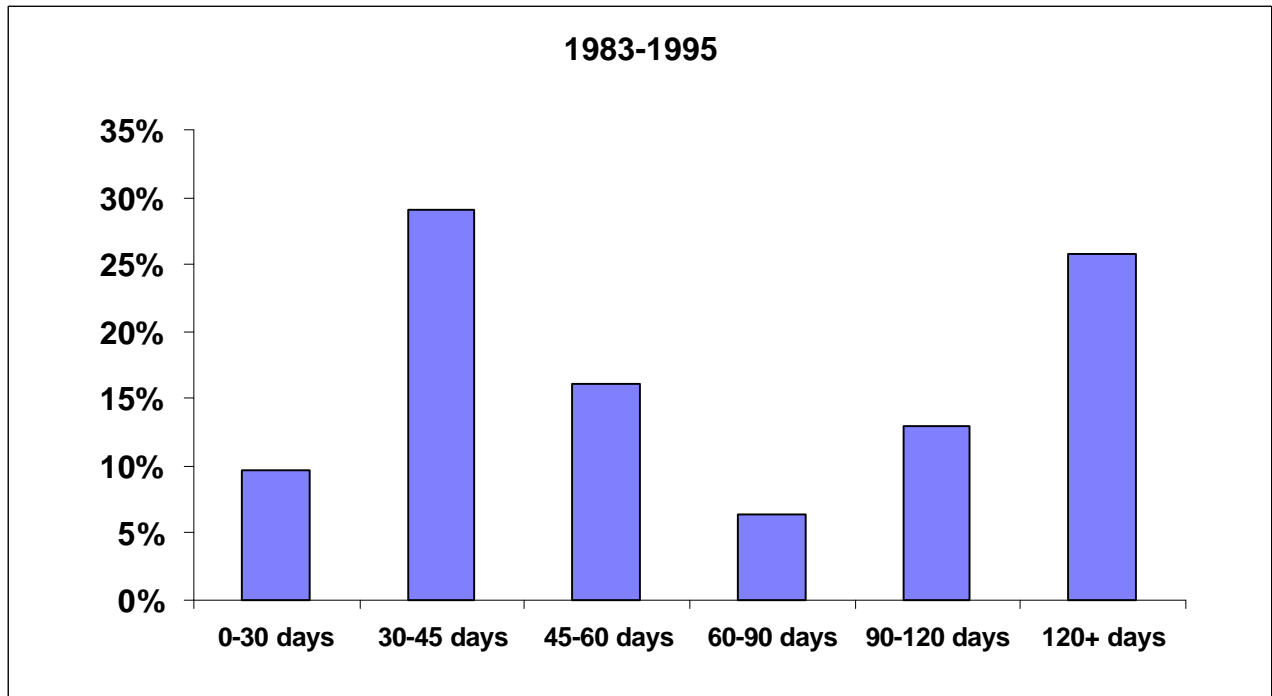
Figure 2
POWER PLANT SIZE COMPARISON



The Commission requires all applications to provide specific data and information. The time required for applications to meet these data adequacy requirements is becoming longer, and fewer Applications for Certification are initially accepted as complete (Figure 3). Due to the complex issues associated with most of the projects, timely participation of other State and local agencies is becoming more critical in evaluating issues and completing the licensing process.

Public participation in the licensing process is increasing and intervention by interest groups is becoming more common. This is due to the economic interests of other competitors and labor unions, as well as the heightened public concerns regarding potential environmental and public health impacts.

Figure 3
DATA ADEQUACY COMPLETION TIME COMPARISON



IV. LICENSING PROCESS EVALUATION

This Section describes the actions the Commission has taken in response to the direction of Senate Bill 110 to evaluate the licensing process. It discusses the issues identified during the evaluation process, recommends specific actions to address them, and provides a rationale for the recommended actions.

Approach to Evaluate the Licensing Process

In May 1999, prior to the passage of Senate Bill 110, the Commission's Siting Committee conducted a public workshop to take input on licensing process issues and potential improvements. Following the passage of Senate Bill 110, in December 1999, the Siting Committee held a hearing on staff-recommended changes to the licensing process. In January 2000, the Siting Committee held a hearing on its own recommended changes. The Commission has considered the comments provided during those hearings, as well as written comments provided outside the hearing process, in developing its recommendations for changes to the licensing process.

In developing recommendations for changes to the licensing process, the Commission focused first on opportunities for using its existing administrative and statutory authorities more effectively to improve the process. Only where more substantive changes are required does the Commission recommend administrative or statutory changes to improve the efficiency and effectiveness of the process in the new electricity market environment.

Evaluation Summary

The issues identified during the evaluation process are discussed below as they affect the efficiency of the licensing process, the effectiveness of public participation and communication, the effectiveness of agency coordination, and the effectiveness of the Commission's structure and resources.

POTENTIAL PROCESS EFFICIENCIES

To identify potential efficiency improvements in the process, the Commission considered the process structure, information requirements, ability to accommodate project changes, procedural timeframes, analytical procedures and scope of required analyses. Each of these topics is discussed below.

Issue #1 - Process Structure: *Should the Legislature eliminate elements of the licensing process that are not currently being used?*

Discussion: In examining this question, the Commission evaluated the benefits of eliminating two elements of the licensing process that are not currently being used - the Notice of Intention and the Small Power Plant Exemption processes.

Notice of Intent

Under current law, large and complex projects, such as direct-fired coal and nuclear facilities, must complete a 12-month Notice of Intention process that evaluates the suitability of sites and likelihood of conformance with applicable legal requirements before filing an Application for Certification for a specific site and technology (Pub. Resources Code, § 25502).

All projects currently being proposed in California, and those expected to be proposed in the foreseeable future, are exempt from the Notice of Intention process. This includes all gas-fired facilities, as specified in Senate Bill 110.

Most stakeholders in the evaluation agreed that no short-term benefit would be realized by eliminating the Notice of Intention process at this time. Such action may, in the long-term, be inappropriate if coal and or nuclear power plants are proposed in the future.

Some representatives of the public, to the contrary, recommended that the Notice of Intention process be applied to all power plants to assure that adequate site and technology alternatives are evaluated in each case.

The Commission staff noted that if the Notice of Intention were eliminated, there would not be enough time to review a controversial project such as a nuclear or direct-fired coal plant during a typical 12-month Application for Certification process. A period of 18 to 24 months would be required to review these projects. They also stated that the Notice of Intention process has historically been very detailed and that if it is retained, it should be streamlined.

Small Power Plant Exemption

Smaller projects, from 50 to 100 megawatts, with no significant environmental impacts, can be exempted from the Commission's licensing process through the Small Power Plant Exemption (Pub. Resources Code, § 25541). Approval of a Small Power Plant Exemption may take from six to eight months and is similar to preparing a negative declaration under CEQA. Applicants must then separately obtain required permits for the project from other State and local agencies.

The Small Power Plant Exemption process can create a false expectation that the time required to fully permit a project will always be much shorter than for an Application for Certification. Because there are not filing requirements for Small Power Plant Exemptions, problems have arisen over the adequacy of filings that have taken months to correct. The Commission has also had difficulty making defensible findings that some Small Power Plant Exemption proposals will have no substantial adverse environmental impacts. After receiving approval from the Commission, some project developers have encountered delays in obtaining subsequent permits from State and local government agencies.

During the evaluation, most project developers recognized the imperfections of the Small Power Plant Exemption process and that it is not often used, but stated that it should be maintained until a more effective, expedited permitting process is developed.

One member of the public proposed that the Commission develop a two-tiered process based on whether projects represent “standard” versus “non-standard” designs instead of using the Small Power Plant Exemption process. Under this proposal, standard projects that comply with certain design and other requirements would be eligible for a 12-month licensing process, while “non-standard” projects would be reviewed in a 24-month process.

A number of project developers questioned the effectiveness of such a process. They pointed out that site-specific factors, in addition to project size or design, often significantly effect the issues associated with a project.

Recommendations:

1. The Legislature should not change the statutory rules for the Notice of Intention process (basically, only coal and nuclear projects are subject to the Notice of Intention).
2. The Legislature should maintain the Small Power Plant Exemption process for now, but the Commission should work with stakeholders to develop an expedited Application for Certification process to replace it for facilities satisfying specific criteria.
3. The Commission should establish data adequacy requirements for a Small Power Plant Exemption application.
4. The Legislature should not change the 12-month Application for Certification process for all natural gas-fired facilities and should not move to a two-tiered process for “standard” and “non-standard” projects.

Rationale: Virtually all generation facilities currently planned in California are gas-fired and, therefore, exempt from Notice of Intention requirements. Elimination of the Notice of Intention would provide no immediate efficiency benefits to the siting process. If the Notice of Intention were eliminated, the Application For Certification decision time for extremely complex and controversial projects, such as nuclear or direct-fired coal, would be inadequate to address the issues involved.

The Small Power Plant Exemption process provides an opportunity to expedite the review of small projects with no or fully mitigated potential significant environmental impacts. Based on the Commission’s experience and input during the evaluation, the Commission believes that a more efficient expedited licensing process would be more effective and efficient than the Small Power Plant Exemption process.

The Commission recommends maintaining the Small Power Plant Exemption process for now and initiating a dialog with the stakeholders to develop an alternative expedited process. To improve the quality of applications for Small Power Plant Exemptions and use Commission resources more efficiently, the Commission will also establish data adequacy regulations for such applications.

Regulatory and environmental issues associated with projects do not always correspond to their basic design characteristics, generating capacity or other physical features. Consequently, the Commission does not support a two-tiered permitting process based solely on “standard” and “non-standard” design characteristics would prove effective in expediting the siting process. Since most projects currently being proposed would fall in the “non-standard” category, by taking such an approach the Commission would be moving back to a two-step permitting process that Senate Bill 110 eliminated for most projects.

Issue #2 - Process Information Requirements: *Should filing information and analysis requirements be modified?*

Discussion: In addressing this question the Commission evaluated the need to clarify data adequacy requirements, broadly distribute confidential information, file information electronically, and eliminate some analytical requirements.

Clarification of Data Adequacy Requirements

The Commission’s data adequacy regulations require a threshold of information in an Application for Certification before the Commission begins its 12-month review of the project. The purpose of these requirements is to ensure that the Commission, other agencies, and the public have sufficient information to fully understand the project and reasonably complete the review within the legislated time frame.

Some agencies expressed concerns that specific, important information needed to complete their analyses is not currently required in data adequacy¹. The Commission staff noted that information necessary to allow timely review of transmission issues by the Independent System Operator should be reflected in the data adequacy requirements. Commission staff have also identified some information requirements that are no longer needed in a competitive market.

Definitions

All parties need to understand the definition of certain commonly used terms in the licensing process so there is no ambiguity regarding what is being discussed or expected. The timely acquisition of emission reduction credits to offset project air pollutant emissions is important for local air districts, the Air Resources Board and the

¹ The Department of Fish and Game identified the need to additional information in written comments during the evaluation. The Water Quality Control Board also identified this while developing a Memoranda of Understanding with the Commission on responsibilities in the licensing process.

U.S. Environmental Protection Agency (USEPA). A delay in obtaining these credits can prolong the licensing process. Therefore, definitions have been proposed for the terms “letter of intent” and “option contract” as they apply to securing emission reduction credits.

The Warren-Alquist Act provides a broad definition of the term “electric utility” to include: “...any person engaged in, or authorized to engage in, generating, transmitting, or distributing electric power by any facilities, including, but not limited to, any such person who is subject to the regulation of the Public Utilities Commission.” (Pub. Resources Code § 25108). The Commission’s siting regulations that provide “...the authority to require from any utility information which is specific to the subject notice or application...” [Cal. Code Regs., tit. 20, § 1716 (g)] do not contain this broad language. In the competitive electricity market in which regulated “utilities” no longer propose to build and operate generating facilities, there is a need to clarify the meaning of the word “utility” in the siting regulations and assure the Commission has the authority to require information it needs.

Disclosure of Confidential Information

Currently, the Commission allows applicants or other parties to request confidentiality for documents that contain trade secrets, which would result in the loss of a competitive advantage, or disclose sensitive environmental information (Cal. Code Regs., tit. 20, § 2505). This information typically includes information on emission reduction credits (offset sources) that applicants are seeking to purchase, locations of sensitive biological or cultural resources, or proprietary processes.

Some intervenors and members of the public recommended that project information currently treated as confidential should be released to the public to allow full disclosure and evaluation. Project developers expressed concern regarding disclosure of confidential material to competitors while agencies have expressed great reluctance in disclosing the location of sensitive environmental resources. Keeping trade secrets confidential is recognized under CEQA (Pub. Resources Code, § 21160).

Electronic Filing of Information

The regulations currently require that parties submitting comments on a licensing case file 12 paper copies with the Dockets Unit and send a copy to everyone on the proof of service list (Cal. Code Regs., tit. 20, § 1209). Many participants now have the capability and desire to send and receive information electronically and prefer using this new medium.

In most instances, the use of electronic mail can reduce costs and improve the efficiency of disseminating information on a siting case. The Commission’s Executive Director currently has discretion under the regulations to allow such electronic filings on a case-by-case basis (Cal. Code Regs., tit. 20, § 1209). Clarification of filing options in the regulations would help to improve the efficiency of the document filing

process while retaining the legal necessity of filing one paper copy of any document with the Commission.

Steam-field Analysis

In the late 1970s, geothermal facilities that filed an Application for Certification without a prior Notice of Intention had to demonstrate the existence of commercial quantities of steam resources. In approving several such geothermal power plants, the analyses performed concluded there were sufficient steam resources for the life of these facilities. These analyses were largely incorrect. This experience indicates the difficulty in trying to quantify an unknown resource and the potential for significant error. In the restructured electricity industry, the project developer will bear these risks.

Recommendations:

1. The Commission should review and, as necessary, modify the data adequacy requirements for an Application for Certification.
2. The Commission should define the terms “Letter of Intent” and “Option Contract”.
3. The Commission should add to Section 1716 (g) of the siting regulations broader language consistent with the definition of “electric utility” found in Public Resources Code, § 25108.
4. The Commission should continue, consistent with the siting regulations, to restrict distribution in licensing cases of confidential information regarding proprietary subjects and sensitive environmental sites.
5. The Commission should provide licensing case participants the option of filing material electronically.
6. The Legislature should delete the current requirements for the Commission to perform a steam-field adequacy analysis for a geothermal project.

Rationale: Establishing clear and reasonable information requirements, and having consistent definitions, improves the likelihood that an Application for Certification will be complete when filed and that the Commission and other agencies will have the critical information needed to assure a timely evaluation of the project.

Continuing to limit the distribution of confidential information is needed to protect the interests of applicants and to protect and preserve sensitive environmental resources. Limiting this information has not precluded intervenors or the public from being fully informed about potential impacts of the project, or of measures proposed to mitigate those impacts.

Providing options for electronic filing of information can facilitate the dissemination of information to agencies and the public. It should reduce the burden on applicants or

other parties for filing multiple copies of documents during the licensing review. Some paper copies will still need to be filed as part of the legal record for public libraries and parties that do not have access to computers.

Because of limited knowledge and uncertainties regarding geothermal reservoir dynamics, previous steam field analyses have had limited value in ensuring there were sufficient quantities of geothermal steam to ensure economic operation of a power plant. Data from the Division of Oil, Gas and Geothermal Resources is available and, combined with appropriate monitoring requirements, can be used to manage the geothermal resource. In the competitive market, geothermal developers will bear the risk of determining whether their projects have sufficient geothermal resources to sustain the project over its economic life.

Issue #3 - Project Changes: *How should the Commission deal with site control and project changes?*

Discussion: In addressing this question, the Commission evaluated the benefits of project site control by the applicant, and the effects of changes to a project made by an applicant during or after the licensing process.

Site Control

Timely licensing and construction of energy facilities can be hindered because applicants have not made sufficient commitments to obtain control of the project site. Site control is not the same as site ownership. Site control can be an option to purchase or lease the land on which a power plant will be located.

Currently, applicants are not required to have any type of site control when they file an Application for Certification for a project. This can result in the Commission approving a project that cannot be built if an applicant is unable to obtain site control after certification. Most of the stakeholders participating in the evaluation indicated concern with needing to have control over the proposed project site, as long as ownership was not required. One participant indicated that if a site is owned by a public agency, obtaining site control before the Commission approves its environmental review and decision may not be possible.

Project Changes During Licensing

Since the advent of restructuring, more projects have undergone major changes both during and immediately after the licensing process than at any time in the Commission's history. At the same time, applicants appear less willing to extend the review schedule and, because of reliability concerns, there are currently more pressures on the Commission to make decisions on projects within 12 months or less.

Applicants desire flexibility in designing their projects. They want to be able to respond to the regulatory and environmental issues that arise during the siting process; as well as to changing market expectations both during the licensing process and during

subsequent project construction. The applicant's desire for flexibility is understandable if the competitive market changes during the three years between the conceptual design of a project and actual operation.

Government agencies, on the other hand, desire a well-defined project when evaluating its environmental impacts and its compliance with existing legal requirements. The public also desires to know specifically what will be constructed in their community and what the effects of the project will be.

Under the Warren-Alquist Act, the Commission is expected to make a decision on a project within 12 months of the date the application is deemed "data adequate" [Pub. Resources Code, § 25522 (a)]. By mutual agreement between the Commission and the applicant, the decision may be made at a later date.

Changes or additions to the project during the siting process create significant problems for the Commission, other agencies, intervenors, and the public in meeting this schedule. It reduces the time available to review the revised project, to obtain revised inputs from agencies, and to prepare the necessary staff analysis and Committee documents.

There are typically two types of project changes. Those proposed or agreed to by the applicant to mitigate a significant environmental impact or public concern and those proposed by the applicant to correct an oversight or modify the project. The Commission frequently tries to accommodate mitigation or changes driven by public concerns without extending the schedule. It has, however, denied changes resulting from the applicant's oversight or modifications if there is not adequate time for review by the Commission, other agencies and the public.

During the evaluation process the Commission staff, other agencies, intervenors, and the public recommended that the Commission propose legislation to allow the Commission to extend the schedule if significant changes were made to a project.

Project developers and utilities acknowledged the difficulties of accommodating project changes without extending the schedule, but pointed out that project changes are often made to address concerns identified by the public or other parties, or to mitigate environmental impacts. They said that "automatically" extending licensing schedules as a result of project changes would make it more difficult for applicant's to respond to environmental issues and public concerns during the licensing process.

One participant during the evaluation recommended that to minimize the problem of project changes the Commission "discipline" applicants to come forward with applications that are complete. They also recommended that the Commission use its existing authority more effectively during the licensing process to manage the schedule in consultation with applicants, and not change the law to extend its authority in this area.

Project Changes after Licensing

Other agencies and the Commission staff expressed concern that there are an increasing number of changes being proposed by project developers immediately after certification. Some of these are routine as the developer moves from conceptual to final design and makes vendor selections for the major pieces of equipment. Others appear to be efforts to avoid announcing modifications during the more visible siting process or lack of thorough project definition prior to filing.

Project developers believe that the Commission's decisions, that normally include a detailed description of the project, limit their opportunity to make reasonable project changes and add unnecessary time and cost to making insignificant changes.

Recommendations:

1. The Commission should require applicants to demonstrate "site control" in an Application for Certification.
2. The Commission should include language in its data adequacy determinations on individual cases to point out that substantial project changes made by the applicant may warrant additional data adequacy review. In such circumstances, the Committee may adjust the schedule as supported by the evidence.
3. To minimize the need for formal amendments, the Commission should, where possible in the final decision, approve a broad description of the project and conditions of certification that allow changes in the project after certification which do not alter the basic project, its features, or its environmental impacts.

Rationale: Requiring an applicant to have site control at the beginning of the siting process eliminates the likelihood that an approved project will not be built because of subsequent issues between the project developer and land owner. It avoids wasting the limited resources of the Commission, other agencies and the public. This does not require ownership of the site and is unlikely to be an impediment to most projects.

The Commission recognizes that some flexibility in a project's description is needed during and after the siting process. The applicant, agencies and the public frequently benefit from project changes during licensing that represent mitigation or respond to valid, unanticipated concerns. Applicants that make changes in response to these concerns should not be penalized by automatically prolonging the schedule.

Agencies and the public, however, should not be penalized by an applicant's changes during licensing to add new features to a project or correct oversights because the project was not fully thought before filing. Sufficient time must be provided to understand and evaluate the implications of changes that redefine the project from the original filing. Rather than requesting the applicant to resubmit the application, the

Commission should adjust the schedule based on the significance of the change, the status of the licensing process and the needs of agencies and the public to modify their analyses and recommendations.

The Commission should write conditions of certification broadly to accommodate project changes made in response to finalizing design that do not add to the project's environmental, public health and safety, or other impacts. This will minimize delays and resource expenditures during project construction and operation while still ensuring compliance with applicable legal requirements and protecting public health and safety and the environment.

Issue #4 - Procedural Timeframes: *Should timeframes be established for procedural events?*

Discussion: Currently, there are no time limits in the licensing process for filing requests for Committee rulings, or for petitioning the Commission to review a Committee ruling. This creates uncertainty and can delay a proceeding.

Information gathering is usually completed by the end of the fourth month. However, there are no specific discovery deadlines prior to the issuance of the hearing order for the start of evidentiary hearings [Cal. Code Regs., tit. 20, § 1716 (h)]. Continuing to ask for information this late in the process can cause unnecessary delays in the schedule.

Recommendations:

1. The Commission should specify time requirements for requesting Committee rulings and appealing of those rulings to the full Commission.
2. The Commission should specify that all requests for information must be submitted no later than 180 days from the date the Application for Certification is found to be data adequate, unless the Committee allows a later date for good cause shown.

Rationale: Imposing a deadline on requests for Committee orders, or appeals of those orders, will provide more certainty in the process, and eliminate the possibility of intentional delay.

Having a date by which all information requests must be submitted will expedite the review process. The Commission's regulations [Cal. Code Regs., § 1716 (h)] currently allow for the Committee to set deadlines for requesting information. Data requests submitted after the start of evidentiary hearings must be submitted by petition to the Committee.

Issue #5 - Analytical Procedures: *Should the Commission continue its certified regulatory program to satisfy the requirements of the CEQA or strictly follow the CEQA guidelines and prepare environmental impact reports?*

Discussion: CEQA requires government agencies to fully disclose and consider a project's environmental consequences when making discretionary decisions regarding the project. It requires an agency to prepare an Environmental Impact Report (EIR) to disclose environmental impacts as well as identify mitigation measures and evaluate alternatives.

An agency is not required to prepare EIRs if it has a "certified regulatory program" approved by the Resources Agency. To qualify, a program must (Pub. Resources Code, §21980.5):

- Utilize an interdisciplinary approach,
- Have protection of the environment a principle purpose of the enabling legislation,
- Have authority to make rules for protecting the environment,
- Require that projects with significant adverse environmental impacts not be approved if there were feasible alternatives or mitigation measures available,
- Require an orderly evaluation of proposed projects,
- Provide for written documentation,
- Require consultation with other agencies,
- Provide written response to significant environmental points raised,
- Require filing of a notice of the decision with the Resources Agency, and
- Require public notice of the project and written documentation.

In 1981, the Resources Agency approved the Commission's siting process as a "certified regulatory program".

The Legislature required the Commission to seek approval of its siting process as a certified regulatory program. The use of such a "functional equivalent" process allowed the Commission to combine its analyses and reduce the number of documents it prepared¹. It also allowed the Commission to fully integrate the intent of CEQA into its entire licensing process.

The primary argument presented during this evaluation for returning to a strict CEQA process and preparing EIRs is that most project developers, agencies and the public are more familiar with EIRs than functional equivalent documents. While this is correct, the Commission's experience has been that project developers and the public readily understand the licensing process and the functional equivalent documents. That point

¹ To make its required findings, the Commission used to prepare multiple documents including an EIR to discuss environmental issues and separate documents to discuss engineering issues, conformance with laws and regulations, and need conformance.

was made by developers during the Budget Subcommittee #5 hearing on February 24, 1999, and by a majority of the participants in this evaluation.

The certified regulatory program has also allowed the Commission to prepare joint environmental documents with federal agencies or allow them to rely on the Commission's documents to meet the requirements of the National Environmental Policy Act. They have said that the flexibility of the Commission's certified regulatory program results in documents that are more useful than are EIRs.

Some State and local agencies, however, continue to have difficulty with the Commission's certified regulatory program. As responsible agencies, they are used to using an EIR when making decisions on general plan amendments, zoning changes, and federal delegated permits. The public has also expressed concern that there is no specific "environmental document" in the siting process that includes responses to written comments on the Commission's evaluation of the proposed project.

During the evaluation, the Commission staff and other participants identified concepts that may be adopted from CEQA to improve the efficiency of the Commission's certified regulatory program. They recommended that the Commission consider holding scoping sessions and providing responses to specific public comments.

They also recommended that the Commission consider preparing an "initial study" type document early in the licensing process. This could go a step beyond the "Issues Identification Report" currently prepared by the staff by identifying those issues that have no significant adverse impact and could be eliminated from further consideration. They also recommended the Commission consider further discussion of this concept is required.

Senate Bill 110 requires the Resources Agency to review the Commission certified regulatory program by December 2000. If the Commission decides to retain the program, it must resubmit information describing the program prior to that date.

Recommendations:

1. The Commission should retain the use of a certified regulatory program and resubmit its program to the Resources Agency for review and approval by December 2000.
2. The Commission should evaluate the use of an "initial study" procedure to identify and prioritize issues early, and pare down staff's written analysis on minor issues where there is no controversy or there are no significant impacts.

Rationale: The Commission's certified regulatory program has worked well and is expected to continue to have value in the restructured electricity industry. Its primary benefit has been and will continue to be one of flexibility and efficiency. It complies

with the substantive aspects of CEQA, while allowing the Commission to consolidate documents that also address multiple statutory requirements and also meet the needs of other agencies.

There are some improvements that can be made in the certified regulatory program. The Commission should directly respond to public comments in one of the documents prepared during the process. While not required of a certified regulatory program, this is typically done in final EIRs and helps the public to understand how its concerns have been addressed (see Issue #8 for a further discussion of this concept).

Finally, CEQA allows for the use of an initial study to help focus the evaluation in a subsequent EIR only on significant adverse impacts. The Commission should consider using this tool to help refine the scope of analyses conducted during the review of a power plant application.

After considering these changes, the Commission will submit its certified regulatory program to the Resources Agency for their consideration by December 2000, as required by Senate Bill 110.

Issue #6 - Scope of Analysis: *Should the Commission modify the scope of the alternatives analysis to reflect the lack of an Notice of Intention preceding the Application for Certification process?*

Discussion: The public is increasingly raising concerns about the need for a more extensive alternatives analysis in the Commission's licensing process. Members of the public that participated in the evaluation as well as public involved in individual licensing cases have further recommended that applicants be required to propose one or more viable alternatives, rather than options that are clearly inferior to the proposed project. They have also recommended that the Commission analyze more alternatives in individual licensing cases.

The need for an expanded alternatives analysis is one reason some members of the public advocate returning to a two-step Notice of Intention and Application for Certification process. Some public argued that by exempting projects from the Notice of Intention, the Commission's licensing process does not comply with the alternatives analysis required by CEQA.

The Commission's alternatives analysis in the Application for Certification process is to satisfy the requirements of CEQA by examining a reasonable range of alternative technologies and locations that:

1. offer substantial environmental advantages over the proposed facility; that is, avoid or mitigate the significant adverse impacts caused by the proposed project;

2. may be feasibly accomplished in a successful manner considering the economic, environmental, social and technological factors; and
3. can achieve most of the basic objectives of the proposed project.

The analysis provides environmental information to the decision-makers on a reasonable range of alternatives including the “no project” alternative. It describes the potentially significant impacts of the proposed electrical generation facility, provides a comparative analysis of the major characteristics and environmental effects of each alternative, and identifies those project alternatives that are capable of reducing or avoiding significant impacts. The examination of alternative technologies and alternative locations is not exhaustive but is consistent with the CEQA guidelines.

While the Commission considered alternatives in the Notice of Intention, its purpose was to evaluate their suitability and relative merit. Nothing in the Notice of Intention precluded the consideration of alternatives to eliminate or avoid significant environmental impacts during the Application for Certification. When the Legislature exempted projects from the Notice of Intention, it required applicants to describe alternatives they had considered and their selection criteria.

Recommendation:

1. The Commission should continue the current alternatives analysis approach used in the licensing process.

Rationale: The Commission’s current approach to analyzing alternatives fully complies with the requirements of both CEQA [Cal. Code Regs., tit. 20, § 15126 (d)] and the Warren-Alquist Act [Pub. Resources Code, § 25540.6 (b)]. It focuses on:

- a reasonable range of alternatives,
- alternatives that could feasibly attain the basic objectives of the project, and
- alternatives that could avoid or lessen significant impacts of the project.

PUBLIC PARTICIPATION AND COMMUNICATIONS

Public participation is a critical component of the Commission’s licensing process. The process is intended to ensure public input in the early stages of the license review, while the Commission staff are collecting information and developing their analysis and as the Commission is formulating its proposed decision. The Commission also seeks to go to the public rather than have the public come to the Commission.

In evaluating ways to improve the efficiency of the licensing process while ensuring public participation and open communication between all participants, the Commission reviewed how parties communicate with each other and with the Commission, how the

Commission responds to public comments, and how the Commission conducts hearings.

Issue #7 - Noticing Requirements: *Should communications between the parties in a proceeding be less restrictive?*

Discussion: To preserve all parties' access to the decision-makers, the Commission's regulations establish an "ex parte rule" (Cal. Code Regs. tit. 20 § 1216). This requires that any communication between the Commissioners (and their advisors) and any party (including the Commission staff) to a licensing proceeding before the Commission be on the public record.

To avoid any perception that the Commission staff, which is not a decision maker but which has special duties on behalf of the public, is not making private agreements, the Commission's regulations also restrict communications on the staff. Sections 1710 and 1718 of the regulations, which requires that "... each and every... presentation, conference, meeting, workshop or site visit..." shall be publicly noticed. The regulations do allow the applicant to "... formally exchange information or discuss procedural issues with the staff without a publicly noticed workshop." In practice, such limits have only been applied to Commission staff. Other parties have had much greater freedom in communicating.

During the evaluation of the Commission's siting process, there was general agreement that all parties should have equal access to the decision-makers. They agreed that the restriction on communications between the decision-makers and the parties, except on the public record, is appropriate.

In contrast, the participants in the evaluation believed that the Commission's current noticing requirements can impede the timely exchange of information and discussion of issues on a licensing case. Many participants stated that communication restrictions between all parties, except the Commission staff, should be dropped.

Project developers urged the Commission to also drop the noticing requirements for meetings on substantive issues with the Commission staff. They argued that Commission staff are not decision-makers and that no other state or local agency has such restriction.

The Commission staff noted that, although not a decision-maker, by law they are an independent party and play a unique and critical analytical and advisory role in a licensing case. While parties should be allowed more freedom to interact with Commission staff to exchange information, "negotiations" with the staff on positions should be conducted in a public forum.

Recommendations:

1. The “ex parte” rule, which requires public meetings between the Commissioners and all other parties, should be continued.
2. Greater clarity is needed in the regulations regarding how staff meets with and obtains information from parties. The Commission should examine the need for flexibility and open exchange of information, and change the current regulations regarding noticing requirements accordingly.

Rationale: To ensure all parties and members of the public have equal access in the decision-making process, the ex-parte rule requiring public meetings between the Commissioners, their advisors, hearing officers and other parties, should be retained.

The Commission is concerned that the current regulations can be interpreted to restrict communication not only between staff and the applicant but between all of the parties. The Commission was not able to resolve this issue but is committed to seeking a solution that allows flexibility and open exchange of information and fosters public participation.

Issue #8 - Response to Public Comments: *Should the siting process be modified to better respond to public comments?*

Discussion: The Commission’s regulations require the Presiding Member’s Proposed Decision to respond to significant points raised during the proceeding (Cal. Code Regs., tit. 20, § 1752.5). This is consistent with the requirements for a certified regulatory program under CEQA.

This approach, however, is different than the manner in which comments are dealt with in Final EIRs. Final EIRs are required not only to respond to significant environmental points raised during the review of the Draft EIR but are required to list the persons providing comments and identify, either verbatim or in summary, the comments and recommendations received (Cal. Code Regs., tit. 20, § 15132).

Since listing and providing written responses to public comments is not common practice in any of the Commission’s documents, some members of the public have expressed concern that their comments are not heard or considered during the licensing process. This concern is heightened because members of the public feel their comments, as opposed to sworn testimony, have no weight in the Commission’s adjudicatory hearings.

During the evaluation the Commission discussed several options for improving its responsiveness to comments made by the public. They ranged from including all of the comments and responses in the Final Staff Assessment or in the Presiding Member’s Proposed Decision, to the current practice of only responding to significant environmental points. There was also discussion about the need to better educate the

public about the process – particularly the differences between workshops and hearings - and the ways they can be most effective.

Recommendation:

1. The Commission should include responses to written comments in the Final Staff Assessment and continue to respond to significant environmental points in the Presiding Member's Proposed Decision.

Rationale: Public participation is very important in the Commission's siting process. Although the Commission may not concur with members of the public on every issue, the public needs to have the opportunity to communicate its concerns and understand that those concerns have been listened to.

Participation tends to be greatest at the beginning of a case when the public is in the process of learning about the proposed project, identifying concerns and determining whether and how the Commission or other agencies are going to deal with their concerns. Having the staff or Committee meet with the public to understand their issues and understand their proposed alternatives would help the public be more involved.

Since the Commission staff has many interactions with the public and other parties during the licensing process, they are in the best position to solicit and respond to comments. Including written comments that are received on the Preliminary Staff Assessment in the Final Staff Assessment will provide the public a better understanding of concerns raised and how the staff has considered those concerns. It will also provide the Committee a consolidated list of the public's comments.

The increased awareness of the public regarding how staff has responded to their concerns will help them better understand the effects of their input on the initial analysis of a project. This will allow them to be more effective in focusing their participation during the subsequent hearing phase of the process.

Issue #9 - Hearing Process: *Should the Commission's hearing be modified to further facilitate communication, issue resolution and public participation?*

Discussion: The Commission's decision in a licensing case is to be based exclusively on the evidentiary record of the proceeding (Cal. Code Regs., tit. 20, § 1751). Hearings on the case are held to establish the record, obtaining statements from the parties and obtaining comments and recommendations from other agencies and the public (Cal. Code Regs., tit. 20, § 1748 and 1754).

Some members of the public feel that the Commission's hearings which include direct testimony and cross-examination is too formal and intimidating. They believe it limits their ability to communicate with the decision-makers, impedes communication between

the parties, and reduces opportunities for resolving issues. Therefore, they have difficulty understanding how they can be effective participants in addressing issues that are important to them in the hearing process.

Unfortunately, the formality of the Commission's hearings is a key factor in arriving at decisions that are based on a record and are legally sustainable.

Recommendations:

1. The Commission should continue to use the existing hearing structure to develop the record required as the basis for a decision.
2. The Commission should clarify the weight given to public comments (versus sworn testimony) in the decision-making process.
3. The Commission should hold early public scoping sessions.

Rationale: Some members of the public have expressed that they are not given the opportunity to contribute significantly to the decision-making process once hearings have begun. Increasing the use of meetings early in the process to identify public issues and options for alternatives will increase the opportunity for public input at a time when issues are being identified and before they are resolved.

Clarifying the role of the public in the hearings will also help them to participate more effectively and will help the decision-makers to better evaluate public input.

AGENCY COORDINATION

The Commission's licensing process requires input and analyses of other State and local agencies. The agencies most frequently involved are local planning departments, the Regional Water Quality Control Board, the California Department of Fish and Game, the California Air Resources Board, and the United States Environmental Protection Agency. Depending on the location of, or issues associated with, the project, additional agencies, such as the California Coastal Commission, might also provide input to the Commission.

While not a government agency, the California Independent System Operator also participates in every licensing case that proposes to interconnect to the transmission grid, which they operate.

In exploring ways to improve agency participation in the licensing process, the Commission evaluated the timing of agency input; local land use decisions in the licensing process; participation of the Independent System Operator; potential overlap between agency and staff analyses; and use of the Commission's override authority.

Issue #10 - Agency Input:: *How can agencies provide more timely input to the siting process?*

Discussion: Section 1714 of the Commission's siting regulations currently requires agencies to submit comments on an Application for Certification prior to the conclusion of the evidentiary hearings. Except for the air districts, which are required to submit a determination of compliance within 180 days from the acceptance of the application, there is no specific date provided in the siting regulations for submittals from other agencies. Consequently, the actual extent, timing and completeness of inputs by other state and local agencies in the licensing process vary widely.

Incomplete or untimely input from agencies can delay the project schedule or deny the Commission critical information it may need to evaluate the project. It is preferred that agencies submit comments and recommendations in advance of the Commission's evidentiary hearings to provide sufficient time for the parties to review the agencies' input.

To address this concern, the Commission staff has entered into Memoranda of Understanding with staffs of the Air Resources Board, Department of Toxic Substance Control, and Water Resources Control Board. Each Memoranda establishes 180 days as the target date for submittal of comments and recommendations, clarify roles and responsibilities, and ensure coordination of all permit requirements in the licensing process. The Commission staff has a similar agreement with the California Independent System Operator

During the evaluation, several project developers identified concerns with the timing of agency participation in the siting process. The Commission staff recommended requiring, in legislation, a date of 180 days from acceptance of the application as the target for agencies and the Independent System Operator to provide final comments and recommendations on the project. One agency expressed concern for such a specific time requirement because of difficulties in obtaining a complete description of the project and necessary data in the application.

Recommendations:

1. The Legislature should require agencies to provide their comments and recommendations to the Commission within 180 days following acceptance of an Application for Certification.
2. The Commission should require Applications for Certification to include all information normally required by agencies to develop their analyses, conclusions and recommendations. (See Issue #2)
3. The Commission should provide agencies sufficient time to evaluate substantial project changes. (See Issue #3)

Rationale: Timely participation by all agencies is important to ensuring that all issues are addressed in the licensing process and in the legislative timeframe. Identifying a time period in the law within which all agencies need to submit their final comments and recommendations will help clarify this state mandate. A target of 180 days will allow the Commission staff to consolidate all of the agency comments and recommendations into its Final Staff Assessment and the Commission to consider them in hearings.

To respond to agency concerns about having sufficient information and time to review the project, the Commission should make the changes in dealing with data adequacy requirements and project changes recommended under Issues #2 and #3.

Issue #11 - Local Land Use Decisions: *When projects are not in conformance with local land use designations, how can local agencies make land use changes, if appropriate, in a timely manner consistent with the requirements of CEQA?*

Discussion: If a project does not comply with a state or local law, including general plan and zoning designations the Commission has the authority to override the noncompliance (see Issue # 14). To exercise this authority, the Commission must consult with the applicable agency and attempt to correct or eliminate the noncompliance.

The easiest way to correct a local land use nonconformity, if appropriate, is for the local land use agency to approve a change in the proposed site's general plan or zoning designation or issue a variance. These are common actions performed by local agencies, but only after they have either prepared or reviewed a certified EIR.

The Commission is the CEQA lead agency for any project it reviews. Most local agencies would prefer to use an environmental document prepared by the Commission prior to making a change in their general plan or zoning or approving a variance. Since the Commission's process is a certified regulatory program, the Commission does not prepare an EIR there has been some confusion on which documents local agencies may use to comply with CEQA.

Several potential solutions were discussed by the stakeholders during the evaluation. They included using the Commission's Final Decision, the Presiding Member's Proposed Decision or the Final Staff Assessment or having the local agency prepare its own document. Members of the public observed that the easiest solution is for project developer to propose projects on sites that already have appropriate land use designations.

There was not sufficient time to resolve this issue during the evaluation.

Recommendation:

1. The Commission should discuss with the Resources Agency and the Office of Planning and Research, and hold workshops on, the issue of providing timely CEQA documentation for local land use decisions on projects that are the subject of an Application for Certification.

Rationale: There was no clear resolution of this issue during the evaluation. More input is required from the agencies responsible for overseeing the CEQA process and to discuss options with all the stakeholders. In the meantime, the Commission will deal with this issue on a case-by-case basis, given the unique circumstances associated with each project.

Issue #12 - Independent System Operator: *How should the Independent System Operator be integrated into the siting process?*

Discussion: Adequate transmission system access, capacity and operational capabilities are critical in licensing individual power plants. Assembly Bill 1890 and the Federal Energy Regulatory Commission have given the California Independent System Operator primary authority over any connection to the transmission system, which they control¹.

The Independent System Operator is a public benefit corporation rather than a state agency and consequently does not have permitting or CEQA responsibilities for either generation or transmission facilities. However, no new generating unit interconnection or increase in generating unit power output may occur in the transmission system without their approval. Consequently the Independent System Operator has become a critical participant in the licensing process for evaluating the reliability and system operation impacts of any project that is interconnected with the grid.

In the licensing process, the Independent System Operator is requested to present its conclusions and recommendations on:

- the interconnection study prepared for the applicant by the transmission owning utility,
- the project's compliance with system reliability standards,
- impacts on reliability and system operation,
- the need for additional transmission facilities, and
- specific reliability or operational requirements that should be placed on the project.

¹ The ISO controls those transmission lines owned by the investor-owned utilities or approximately 81 percent of the transmission system in California. Approximately 10 percent of the system is owned by Municipal Utilities and 9 percent by federal agencies and are not subject to control by the ISO.

The Independent System Operator may also identify transmission system benefits from the proposed project ¹.

The Commission evaluates the environmental impacts associated with any proposed transmission line and any “downstream” facilities or upgrades required by the Independent System Operator for connection of a generating unit to the transmission system.

The Independent System Operator’s review function is not currently identified in either the Warren-Alquist Act or the Commission’s regulations. The Commission staff and the Independent System Operator, however, recently completed a Memoranda of Understanding that identifies their desired relationship during licensing.

The Independent System Operator is also responsible for overseeing transmission system planning. Since this may result in projects proposed for licensing by the Commission, the Independent System Operator and Commission need to work together understand the relationship between these activities.

Recommendations:

1. The Commission should send copies of each Application for Certification to the Independent System Operator and request analyses, conclusions and recommendations from the Independent System Operator regarding transmission system operations and reliability.
2. The Commission requests that the Independent System Operator continue commenting on data adequacy; submit comments on the proposed transmission interconnection within 180 days of acceptance of the Application for Certification (See Issue #10); and testify in hearings, if critical, on transmission system reliability and the relevant transmission study.
3. The Commission and the Independent System Operator should establish a relationship between the Independent System Operator’s transmission planning process and the Commission’s policy and permitting processes.

Rationale: Given the Independent System Operator’s responsibility to ensure the reliability of the transmission system that they operate, it is critical for the Commission include the Independent System Operator in its process for licensing projects. While the desired relationship between them is established in an MOU between the two organizations, the Commission’s obligations to provide the Independent System Operator with documents and request analyses should also be reflected in the Commission’s siting regulations. Both organizations need to understand the

¹ The Energy Commission staff perform all of these functions, in close coordination with the ISO, if the project does not interconnect with the ISO controlled grid.

relationship between the Independent System Operator's transmission planning work and the Commission's licensing processes.

Issue #13 – Analysis by other agencies and Commission staff: *Should the Commission rely on the findings of other agencies or have Commission staff perform its own independent analysis?*

Discussion: Some project developers believe that Commission staff's analysis duplicates the work of other state and local agencies. Other stakeholders disagree claiming that the Commission staff plays an important role as an independent party and should provide a comprehensive review of a project's compliance with legal requirements and environmental impacts and facilitate agency participation in the process.

The Commission staff is required to present an independent analysis of every licensing case (Cal. Code Regs., tit. 20, § 1712.5). It prepares a report on the environmental effects of the proposed project and the need for additional or alternative mitigation measures [Cal. Code Regs., tit. 20, § 1742.5 (a)] and to ensure a complete consideration of the significant environmental issues, and safety and reliability matters [Cal. Code Regs., tit. 20, § 1742.5 (d) and 1743 (b)]. The Commission staff is expected to consult, assist and coordinate with other agencies; focus on areas not expected to be considered by other agencies; and ensure that all matters necessary for the Commission's decision are considered [Cal. Code Regs., tit. 20, § 1742 (c), 1743 (b), and 1744 (c)].

The Commission also relies on other agencies to evaluate whether a project is in compliance with their applicable laws, ordinances, regulations and standards [Cal. Code Regs., tit. 20, § 1744 (b)]. If the project is in non-compliance, the agencies are asked to identify measures necessary to bring a project into compliance with their regulations [Cal. Code Regs., tit. 20, § 1744 (c)].

The two primary areas where some stakeholders believe the Commission staff unnecessarily duplicates the work of other agencies are water quality and air quality¹.

The nine California Regional Water Quality Control Boards in the State regulate surface and groundwater quality within their jurisdictions under authority granted by the Clean Water Act and Porter-Cologne Water Quality Control Act. The Regional Boards' approach to water quality protection is through the designation of beneficial uses, the development of water quality criteria to protect those beneficial uses, and application of those criteria to wastewater discharges through specific and general permits. Water quality impacts that do relate to these criteria may not be addressed by a Regional Board and may not be mitigated under Regional Board standards. In addressing

¹ Most applicants obtain a separate permit from one of the Regional Water Quality Control Boards after they receive a license from the Commission while the air quality requirements are included in the Commission's license.

environmental impacts and mitigation, the Regional Boards use economic criteria set by the Clean Water Act that are different from criteria used under CEQA.

Because the Regional Boards focus on wastewater discharges, they do not address water supply issues, such as impacts from increased groundwater pumping, or impacts on community water supply systems. In licensing cases, the Regional boards also do not address cumulative impacts or alternatives.

The Commission staff analyzes all of the water quality and supply issues not covered by the Regional Boards.

In the area of air quality, local, State and federal agencies are frequently involved in licensing. Local air district regulations are often designed to implement federally-delegated programs but the agencies often have different opinions concerning applicable regulatory requirements, including emission control levels, emission offsets and a variety of other air quality issues. The Commission staff works to coordinate the efforts of these agencies to resolve important issues so that the Committee receives a complete and objective analysis that is not subject to legal challenge.

The air district's regulations are designed to meet the requirements of the Federal Clean Air, not the requirements of CEQA, and often do not address all aspects of a project. To comply with CEQA, the Commission staff addresses all potential air quality impacts from a project, not just those aspects of a project that are specifically spelled out in an air district's rules.

An air district's analysis of a project often focuses on their rules. Since rules can vary considerably between districts, each district's expertise is critical in addressing the nuances of their rules. Commission staff has an in-depth understanding of generation facilities and how other districts have dealt with similar issues. Thus, the Commission staff can foster a more consistent handling of air quality issues throughout the State and ensure that applicants receive similar treatment no matter where they propose to develop.

There are differences in the topics addressed by air districts and the Commission staff. Air districts typically address emission control and offset requirements for the primary combustion source, the combustion turbine. The Commission staff addresses cooling tower and construction emission impacts, and the project's emission contributions to ozone and secondary particulate matter formation. Commission staff also addresses site-specific air quality conditions, steady state operation emission impacts, start-up emission impacts, cumulative impacts, and project alternatives.

While the Commission seeks to rely on other agencies, there are times where the Commission must evaluate a project's compliance with another agency's laws. This has occurred where an agency is not performing timely work or clearly appears to be disregarding or misinterpreting its requirements. Under these circumstances, relying

on the agency's analysis and conclusions may significantly delay or possibly jeopardize the Commission's license.

Recommendation:

1. The Commission staff should not duplicate the review of other agencies regarding a project's compliance with applicable legal requirements, except where the agencies are not performing the work in a timely manner or where reliance on their analyses may place the Commission's decision in jeopardy.

Rationale: The Warren-Alquist Act and the Commission's regulations require an assessment of a project's compliance with applicable laws, ordinances, regulations and standards; and a CEQA type analysis of environmental impacts, mitigation and alternatives. The Commission will rely on other agencies to assess compliance with their legal requirements since they have that knowledge and expertise.

The Commission staff may assist and coordinate an agency's assessment to assure that all aspects of the facility's compliance with applicable legal requirements are considered, and that agency input to the process is timely and complete. The Commission staff may also become involved if reliance solely on the agency's analysis and conclusions may place the Commission's decision in jeopardy.

Most state and local agency regulatory programs are not designed to comprehensively address all of the environmental impacts associated with a project. The Commission staff must identify and evaluate those environmental matters not considered by other agencies to ensure a complete compliance with CEQA.

Issue #14 - Override authority: *When should or will the Commission override significant adverse impacts under CEQA or noncompliance with state or local agency legal requirements?*

Discussion: Some project developers have asked the Commission to identify the circumstances under which it will use its override authority to approve a merchant facility. The Commission has the authority to override significant adverse impacts identified under CEQA or noncompliance with state or local legal requirements, if such action is appropriate.

To grant a certificate to a facility that has a significant adverse impact, the Commission must find that the facility has benefits that override its significant adverse environmental impact. To override noncompliance with local or state legal requirements, the Commission must consult with the applicable agency in an effort to resolve the noncompliance [Pub. Resources Code § 25523(d)] and then determine that the facility: "...is required for public convenience and necessity and that there are not more prudent and feasible means of achieving such public convenience and necessity." (Pub. Resources Code, § 25525). Senate Bill 110 augmented this language by stating

that in making an override determination the Commission is to consider "...the entire record of the proceeding, including, but not limited to, the impacts of the facility on the environment, consumer benefits, and electric system reliability. The Commission has broad discretion in making an override determination.

Historically, the Commission has based its determination of public convenience and necessity in large part on the "integrated assessment of need" that used to be established in the Electricity Report. However, Senate Bill 110 eliminated the integrated assessment of need for individual power plants, noting that since power plant owners are at risk to recover their investments, it is no longer appropriate for the Commission to make the need determination [Pub. Resources Code, § 25009].

Senate Bill 110 stated that it is still necessary for California to protect environmental quality and site new power plants to:

1. Ensure electricity reliability,
2. Improve environmental performance of the current electricity industry, and
3. Reduce consumer costs (Pub. Resources Code, § 25009).

The Commission is monitoring the emerging competitive market and working with the Independent System Operator, air districts, and other entities on issues, such as reliability, that may define specific needs to be met by energy projects. In the meantime, the Commission must consider the appropriateness of overrides based on the facts and circumstances of each case. Project developers should be aware that it will be more difficult to make such required findings for facilities that are purely "merchant facilities" and are not distinguishable with respect to the considerations identified in Senate Bill 110 from other projects participating in the competitive market.

Recommendations:

1. The Commission should continue to evaluate the appropriateness of overriding significant adverse impacts under CEQA or noncompliance with state or local legal requirements based on the factual record and the desirability for making the required findings on each individual licensing case.
2. The Commission should continue to monitor the emerging competitive market and work with other entities, particularly the Independent System Operator and their transmission planning process, to identify the circumstances where energy facilities may be required to meet reliability, environmental, or other public policy objectives. The Commission should provide guidance on these circumstances as part of its energy policy responsibilities.

Rationale: At this time the Commission does not have any criteria to guide it in implementing its override authority in the restructured electricity industry. As the Independent System Operator establishes its transmission planning process and

identifies system reliability needs, and as other public policy objectives emerge related to the licensing of individual energy facilities, the Commission will consider establishing further guidance on override in its policy forums. At the present time however, it will consider the facts and appropriateness of using its override authority on a case-by-case basis.

ORGANIZATION AND RESOURCES

In carrying out its energy facility licensing and compliance monitoring functions, the Commission relies on a staff of project managers, attorneys, hearing officers, environmental scientists and engineers. Having sufficient trained and experienced staff:

- improves the efficiency of the licensing process,
- allows the Commission to produce legally sustainable licensing decisions on time,
- monitor compliance and respond to public concerns on projects in construction and operation, and
- review project amendments after licensing.

Presently, the Commission's licensing and compliance monitoring workload exceeds its available resources. The increased workload is due to a greater number of licensing applications, project amendments and project closures. In addition the cases are becoming more complex and controversial. The resulting resource problem may result in lower quality analyses or decision delays.

Issue #15 - Resources: *Should additional resources be provided to the Commission for energy facility siting and compliance monitoring?*

Discussion: Reviewing licensing applications and monitoring compliance of approved projects are two of the functions in the Commission's Power Plant Site Certification budget element. On average, the Commission has reviewed an average of 8 licensing applications per year¹. The number of applications in review, however, has varied from one and 23 applications per year (Figure 4). Projects in compliance monitoring have steadily increased although the number of amendments shows some variation.

Already in Fiscal Year (FY) 1999-00, the Commission:

- has completed or initiated reviews of 17 license applications² and may receive 6 to 9 more in the next 4 months (see Table 1);

¹ On average four new cases are filed in a year with others carrying over in review.

² One of the cases, Morro Bay, has withdrawn their AFC but expects to refile in April, 2000.

- is monitoring 4 projects in construction, 34 in operation and one in decommissioning; and
- has reviewed 9 amendments and expects to receive 7 more in the next four months.

In FY 2000-01, the Commission could be involved in reviewing as many as 32 energy facility siting applications, 16 amendments to existing licenses, and construction of 22 projects.

Workload Requirements

The application licensing and compliance monitoring workload reflect the licensing application and compliance monitoring trends. The licensing workload is quite variable while the monitoring workload has increased steadily but with some variability associated with amendments.

As a result of an increased number of licensing applications, greater complexity of licensing cases, and increased amount of compliance monitoring and amendment review, the Commission is seriously overloaded. During the FY 1999-00 budget, the Legislature increased the Commission's baseline resources to 65.6 permanent positions and \$400,000 for licensing and compliance monitoring¹. This is sufficient to handle 12 to 14 cases depending on schedule and complexity.

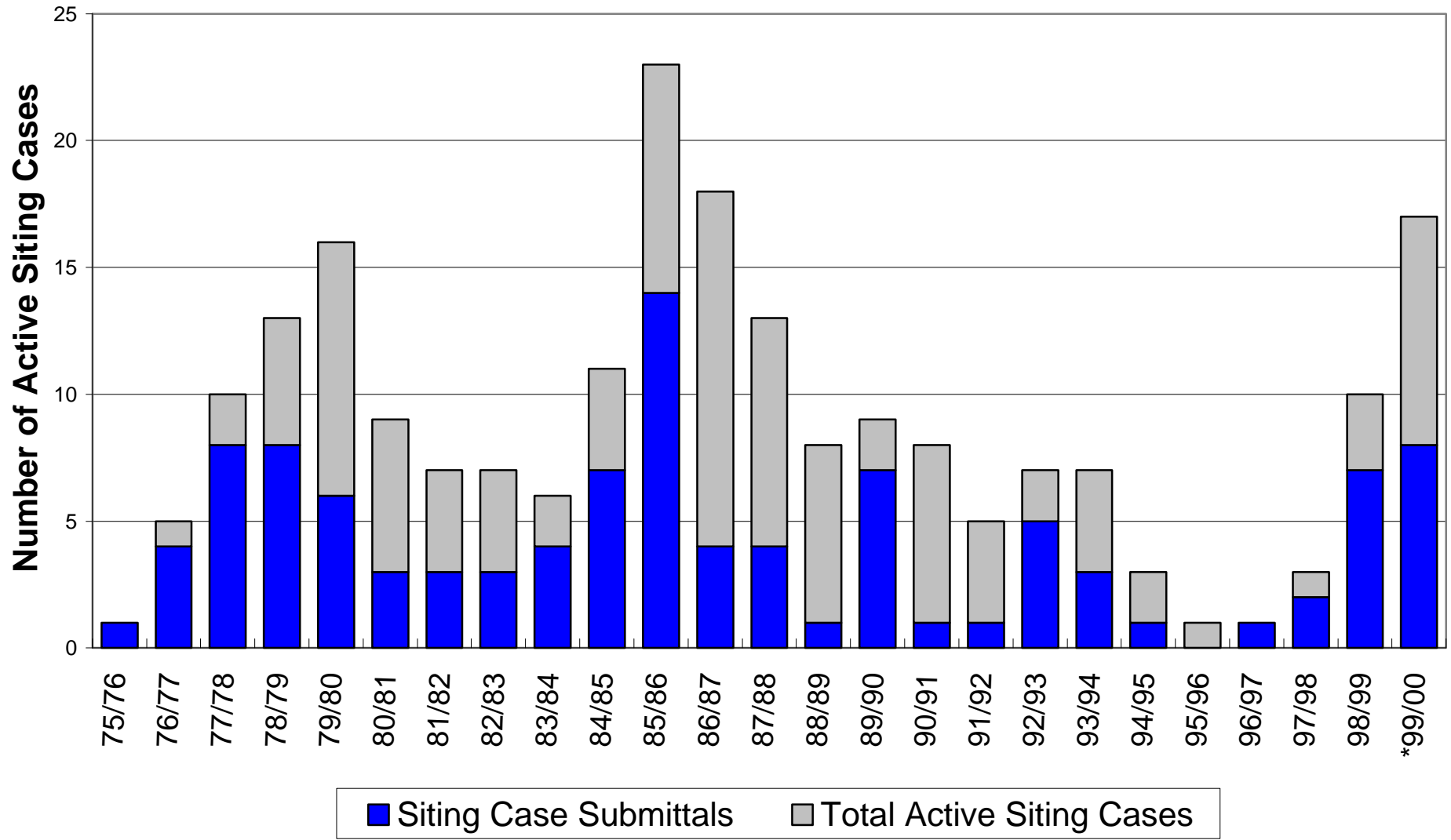
In response to the number of licensing applications received by the Commission during the first half of FY 1999-00 and anticipated during the remainder of the year, the Legislature authorized the Commission to spend an additional \$1.88 million in contract funds. This will allow the Commission to review most of the licensing applications but will not provide sufficient resources for FY 2000-01.

Redirect "Need" Staff

Redirecting staff previously used to perform "need" analyses is one option proposed to increase resources for licensing and compliance monitoring. The Commission historically performed an analysis of "need" conformance in each siting case. This analysis enabled the Commission to make a required finding in its final decision

¹ This does not include the three positions in the Public Advisor's Office.

ACTIVE ENERGY FACILITY SITING CASES BY FISCAL YEAR



“...regarding the conformity of the proposed facility with the integrated assessment of need for new resource additions...(Pub. Resources Code, § 25523).”

Senate Bill 110 eliminated the concept of “need conformance” from the Commission’s siting process. It had, however, very little impact on the Commission’s resources because no resources have been spent on the “need” analysis in the last six years. Both the 1994 and 1996 Electricity Reports eliminated the need tests for power plants selling electricity in the competitive market¹. Since FY 1996-97, the Commission eliminated or redirected 15 positions in the Energy Information and Assessment Division that performed the need analyses².

Provide Additional Resources

Project developers have recommended providing the Commission with a level of resources that reflect the actual workload. During the FY 1999-00 budget hearings³, they noted that one of the assets of the Commission’s siting process was a professional and knowledgeable staff and recommended increasing the Commission’s staff to respond to the increased workload. When asked, they recommended increasing the level of staff resources to respond to the problem.

Resolution of the workload problem, however, is not as simple as increasing the number of staff resources. The duration and magnitude of the workload is still uncertain. While it is clear that the number of siting cases is continuing to increase in FY 2000-01, it is not clear whether this trend will continue, stabilize or decline. The Commission supports maintaining a trained and knowledgeable staff, but wants to avoid hiring more staff resources than can be fully employed for more than two years. The Commission has used contractors to respond to peak workloads that last for two years or less. Consequently, the Commission recommends adding a combination of staff and contract funds in response to the expected FY 2000-01 workload.

Recommendation:

1. To respond to the increasing yet uncertain duration of licensing and compliance workload, the Legislature should augment the Commission’s budget with a combination of staff positions and contract funds.

Rationale: The current funding is sufficient to review 12 to 14 siting cases, not the 16 to 25 expected during FY 1999-00 or the potential for 32 cases during FY 2000-01. The duration and magnitude of the future workload remains uncertain. To avoid a “hire

¹ The 1994 Electricity Report stated that: “...need conformance tests should not stand in the way of power plant development, if the plant is functioning in a competitive environment, at least as long as new plants are within the amount of capacity found potentially beneficial in the Commission’s integrated assessment of need (page 133).”

² 6.0 of these were redirections, 6.0 were unallocated budget cuts and 3.0 were salary savings cuts required to reduce our budgeted salary savings.

³ Source: Transcript of the California State Senate Budget Committee meeting of Wednesday, February 24, 1999.

and fire” situation, the Commission requests a combination of staff positions to respond to the “baseload” work and contractors to respond to “peak” work. The Commission will provide an updated workload projection and budget requests as requested by the Legislative Analyst during the May Revise.

Issue #16 - Fees: *Should applicants pay fees for the licensing of energy projects?*

Discussion: Project developers are not currently charged a fee for the Commission’s review of an Application for Certification. Applicants are only required to reimburse local agencies for their actual costs in complying with any request from the Commission or any permit fees. Applicants do pay the cost of the Commission’s environmental work on a Small Power Plant Exemption.

The Commission’s average direct cost for reviewing the Applications for Certification for the first three merchant facilities was \$562,000¹. This is less than one-half of one percent to the cost of a new 500 megawatt power plant.

Concerns with Fees

The Legislative Analyst proposed charging fees in 1987 and 1993. In evaluating this question the Commission made the following observations:

- Fees can be structured in a number of ways – either fixed based on a standard process or service, or variable based on the actual expense incurred.
- Any fund established by fees needs to be carefully managed to maintain an experienced and knowledgeable core staff and to rapidly acquire resources during peak workload periods.
- The Commission’s energy facility siting workload is variable with peaks and valleys dependent on the actions of project applicants.
- Fees may encourage applicants to provide more timely and complete applications, reduce the number of unnecessary project changes and reduce speculation.
- Investor owned utilities and municipal utilities are able to pass the cost of fees off to their ratepayers while independent power producers are not.
- The Commission’s primary “client” during the permitting process is the public. Having the process paid for by the applicant may, in the perception of some, imply greater influence of the applicant on the outcome.
- All ratepayers benefit from the permitting process regardless of where the proposed facility is located.

¹ This is based on the work being performed by Commission staff, an average of 8.4 person years to review the three Applications, and a cost of \$75,000 per person year for salary and benefits. This does not include normal operating expenses, travel or Commission overhead. If consultants are used to perform the technical work, the cost would be approximately 30% greater.

- The community where the proposed facility is located benefits from the permitting process.

The Legislature did not support charging fees at that time.

Restructuring of the electricity industry has eliminated the Commission's previous concerns regarding equity since the current project developers are private companies or non-regulated utility subsidiaries. Only the municipal utilities have the ability to pass their costs along to the ratepayers.

Perceived conflict of interest remains an issue. Fees are paid for most permits and licenses in the state. In controversial energy facility permitting cases, however, the public frequently asks the Commission whether the applicant is paying for the license review. When the answer is "no", they frequently express the opinion that they would sooner be paying for the process and know the Commission is impartial than thinking the project developer had some additional influence.

Management Issues

The Commission's primary concern with fees is how the funds are managed. Unlike most agencies that collect fees, the Commission receives a relatively small number of applications to permit very large capital cost projects and the number of applications received is highly variable. If the licensing process is only funded by fees collected when applications are submitted, the Commission will experience cycles of staff hiring and firing, experience delays in obtaining staff or consultants¹, and lose its knowledge and expertise.

As applicants and others stated during the FY 99-00 Budget Hearings, one of most valuable assets of the Commission is a staff knowledgeable about energy facilities, licensing issues, and other agencies. It is important to maintain a trained core staff and contract resources to develop react rapidly when license applications or compliance amendments are filed. If the management of fees does not allow this, licenses will be delayed, their legal defensibility will be jeopardized, and monitoring will be sporadic.

Recommendation:

1. The Commission should continue working with the Department of Finance and the Administration on the collection of fees and the mechanism to maintain a core of trained staff to rapidly respond changes in workload.

Rationale: The objectives for managing any funds collected should be to:

- maintain a trained core staff of project managers, technical experts, and attorneys to perform baseline work,
- use contractors to handle peak workload and topics requiring unique expertise,

¹ Three to nine months are required on average to hire civil service staff. Six to nine months are required to obtain contractors using the states contract process.

- avoid the hiring and firing of staff during workload fluctuation, and
- avoid lag time between the collection of funds and performance of work by staff or contractors.

LICENSING JURISDICTION AND EMINENT DOMAIN

During the course of the evaluation, the potential for improving efficiency by changing the Commission's jurisdiction and eminent domain were also discussed.

Issue #17 – Jurisdiction Changes: *Should licensing of energy facilities be consolidated?*

Discussion: The Commission has licensing jurisdiction over thermal power plants with gross generating capacities of 50 megawatts or greater, associated electric transmission lines and other appurtenant facilities. Smaller and non-thermal power plants, repowered thermal power plants that do not result in a generating capacity increase of at least 50 megawatts, and transmission lines that are not associated with power plants under the Commission's jurisdiction are licensed by other state and local agencies.

California's approach for licensing energy facilities is fragmented. It results in inconsistent licensing processes, regulatory requirements and public participation for projects supporting the same integrated electricity system and participating in the same competitive market. It can lead to:

- an incomplete analysis of analysis of individual project impacts on the electrical system,
- incomplete consideration of alternatives,
- incomplete assessment of the regional or cumulative environmental impacts associated with energy facility development, and
- licensing decisions that are duplicative or conflicting.

Concepts that have been previously identified to respond to this issue include:

- Consolidating state licensing of generation and transmission facilities,
- Consolidating state licensing of generation, transmission and pipeline facilities,
- Including non-thermal power plants with a generating capacity of 50 megawatts or greater in the Commission's jurisdiction,
- Lowering the Commission's jurisdiction to include power plants with a capacity less than 50 megawatts,
- Including all repowering projects in the Commission's jurisdiction regardless of the change in site generating capacity.

This issue has been the subject of previous discussions including a Little Hoover Report prepared in December, 1996, Senate Budget Subcommittee #5 hearings in 1999, and Energy Commission Biennial Report hearings.

During this evaluation, the Commission asked stakeholders to consider consolidating state licensing of generation and transmission facilities and modifying repowering jurisdiction. The Commission and some of the stakeholders also raised the related issue of placing authority for eminent domain over transmission lines with the agency responsible for licensing those facilities.

Discussion of this issue was limited because of time constraints and other topics to be considered. It focused positions previously expressed by stakeholders not on evaluating the underlying issues, the needs of the state, and reasons for stated positions. During the hearing before the full Commission, several stakeholders suggested that this issue needed to be more fully explored by the administration and involved agencies.

Recommendations:

1. The Legislature should consolidate state licensing of electricity generation and transmission facilities.
2. The Legislature should include eminent domain authority with transmission line licensing authority.

Rationale: Reducing fragmentation within the state's licensing structure will improve the efficiency of licensing energy facilities. It should also help achieve the objectives identified in Senate Bill 110 of ensuring electricity reliability, improving environmental performance of the current electricity industry and reducing consumer costs.

This is a complex issue involving a number of parties with strong and divergent interests. Because of its importance, the Commission is ready and willing to work with other agencies and the stakeholders to seek a resolution.

The Commission supports its previous position that state licensing authority for large energy facilities – both power plants and transmission lines - should be consolidated in one agency. The benefits of consolidation would include:

1. reduced the fragmentation of the current regulatory process;
2. consistent review, public participation and license requirements for all market participants;
3. consideration of regional and cumulative issues;
4. full consideration of alternatives;
5. lack of duplication of the licensing expertise; and

6. efficient coordination with resource agencies and the Independent System Operator.

Eminent domain is not an issue to be taken lightly. The construction of new transmission lines in California required for reliability and system operation, however will require the exercise of eminent domain. The Commission supports its previous position that the public agency responsible for permitting transmission lines should have authority for eminent domain.

V. SUMMARY OF CONCLUSIONS AND LIST OF RECOMMENDATIONS

SUMMARY OF CONCLUSIONS

None of the stakeholders involved in the Commission's evaluation, or those who participated in legislative, have advocated eliminating or substantially altering the licensing process. Additionally, most stakeholders have urged the Commission to maintain its certified regulatory program rather than return to an EIR process.

As a result of its evaluation, the Commission has confirmed that its licensing process is fundamentally sound and provides an efficient and legally sustainable method for licensing large power plants and related transmission lines in California. However, the Commission identified a number of opportunities to improve the process.

LIST OF RECOMMENDATIONS

The following is a summary of the recommendations contained in this report organized by the type of action required – legislation (changes in the Warren-Alquist Act), regulation (changes to the Commission's regulations), or procedural (internal changes by management). Following each recommendation are the issue number and page number where the recommendation appears in the main text.

RECOMMENDATIONS FOR CHANGES TO THE WARREN-ALQUIST ACT

Specific recommendations for legislative action are:

1. The Legislature should not change the statutory rules for the Notice of Intention process (basically, only coal and nuclear projects are subject to the Notice of Intention). [Issue #1, page 22]
2. The Legislature should maintain the Small Power Plant Exemption process for now, but the Commission should work with stakeholders to develop recommendations for an expedited Application for Certification process for facilities satisfying specific criteria. [Issue #1, page 22]
3. The Legislature should not change the 12-month Application for Certification process for all natural gas-fired facilities and should not move to a two-tiered process for "standard" and "non-standard" projects. [Issue #1, page 22]

4. The Legislature should delete the current requirements for the Commission to perform a steam-field adequacy analysis for a geothermal project. [Issue #2, page 25]
5. The Legislature should require agencies to provide their comments and recommendations to the Commission within 180 days following acceptance of an Application for Certification. [Issue #10, page 38]
6. To respond to the increasing yet uncertain duration of licensing and compliance workload, the Legislature should augment the Commission's budget with a combination of staff positions and contract funds. [Issue #15, page 49]
7. The Legislature should consolidate state licensing of electricity generation and transmission facilities. [Issue #17, page 53]
8. The Legislature should include eminent domain authority with transmission line licensing authority. [Issue #17, page 53]

RECOMMENDATIONS FOR CHANGES TO THE COMMISSION'S REGULATIONS

Specific recommendations for action by the Commission to modify its regulations are:

1. The Commission should establish data adequacy requirements for a Small Power Plant Exemption application. [Issue #1, page 22]
2. The Commission should review and, as necessary, modify the data adequacy requirements for an Application for Certification. [Issue #2, page 25]
3. The Commission should define the terms "Letter of Intent" and "Option Contract". [Issue # 2, page 25]
4. The Commission should add to Section 1716 (g) of the siting regulations broader language consistent with the definition of "electric utility" found in Public Resources Code, § 25108. [Issue #2, page 25]
5. The Commission should continue, consistent with the siting regulations, to restrict distribution in licensing cases of confidential information regarding proprietary subjects and sensitive environmental sites. [Issue #2, page 25]
6. The Commission should provide licensing case participants the option of filing material electronically. [Issue #2, page 25]
7. The Commission should require applicants to demonstrate "site control" in an Application for Certification. [Issue #3, page 28]

8. The Commission should specify time requirements for requesting Committee rulings and appealing those rulings to the full Commission. [Issue #4, page 29]
9. The Commission should specify that all requests for information must be submitted no later than 180 days from the date the Application for Certification is found to be data adequate, unless the Committee allows a later date for good cause shown. [Issue #4, page 29]
10. The “ex parte” rule, which requires public meetings between the Commissioners and all other parties, should be continued. [Issue #7, page 35]
11. Greater clarity is needed in the regulations regarding how staff meets with and obtains information from parties. The Commission should examine the need for flexibility and open exchange of information, and change the regulations regarding noticing requirements accordingly. [Issue #7, page 35]
12. The Commission should clarify the weight given comment (versus sworn testimony) in the decision-making process. [Issue #9, page 37]
13. The Commission should hold early public scoping sessions. [Issue #9, page 37]
14. The Commission should require Applications for Certification to include all information normally required by agencies to develop their analyses, conclusions and recommendations. [Issue #10, page 38]
15. The Commission should send copies of each Application for Certification to the Independent System Operator and request analyses, conclusions and recommendations from the Independent System Operator regarding transmission system operations and reliability. [Issue #12, page 41]

RECOMMENDATIONS FOR INTERNAL MANAGEMENT CHANGES

Specific recommendations for the Commission to make in its procedures and internal practices are:

1. The Commission should include language in its data adequacy determinations on individual cases to point out that substantial project changes made by the applicant may warrant additional data adequacy review. In such circumstances, the Committee may adjust the schedule as supported by the evidence. [Issue # 3, page 28]
2. To minimize the need for formal amendments, the Commission should, where possible in the final decision, approve a broad description of the project and conditions of certification that allow changes in the project after certification which

do not alter the basic project, its features, or its environmental impacts. [Issue # 3, page 28]

3. The Commission should retain the use of a certified regulatory program and resubmit its program to the Resources Agency for review and approval by December 2000. [Issue #5, page 31]
4. The Commission should evaluate the use of an “initial study” procedure to identify and prioritize issues early, and pare down staff’s written analysis on minor issues where there is no controversy or there are no significant impacts. [Issue #5, page 31]
5. The Commission should continue the current alternatives analysis approach used in the licensing process. [Issue #6, page 33]
6. The Commission should include responses to written comments in the Final Staff Assessment and continue to respond to significant environmental points in the Presiding Member’s Proposed Decision. [Issue #8, page 36]
7. The Commission should continue to use the existing hearing structure to develop the record required as the basis for a decision. [Issue #9, page 37]
8. The Commission should provide agencies sufficient time to evaluate substantial project changes. [Issue #10, page 39]
9. The Commission should discuss with the Resources Agency and the Office of Planning and Research, and hold workshops on, the issue of providing timely CEQA documentation for local land use decisions on projects that are the subject of an Application for Certification. [Issue #11, page 40]
10. The Commission requests that the Independent System Operator continue commenting on data adequacy; submit comments on the proposed transmission interconnection within 180 days of acceptance of the Application for Certification; and testify in hearings, if critical, on transmission system reliability and the relevant transmission study. [Issue #12, page 41]
11. The Commission and the Independent System Operator should establish a relationship between the Independent System Operator’s transmission planning process and the Commission’s policy and permitting processes. [Issue #12, page 41]
12. The Commission staff should not duplicate the review of other agencies regarding a project’s compliance with applicable legal requirements, except where the agencies are not performing the work in a timely manner or where reliance on their analyses may place the Commission’s decision in jeopardy. [Issue #13, page 44]

13. The Commission should continue to evaluate the appropriateness of overriding significant adverse impacts under CEQA or noncompliance with state or local legal requirements based on the factual record and the desirability for making the required findings on each individual licensing case. [Issue # 14, page 45]
14. The Commission should continue to monitor the emerging competitive market and work with other entities, particularly the Independent System Operator and their transmission planning process to identify the circumstances where energy facilities may be required to meet reliability, environmental, or other public policy objectives. The Commission should provide guidance on these circumstances as part of its energy policy responsibilities. [Issue #14, page 45]
15. The Commission should continue working with the Department of Finance and the Administration on the collection of fees and the mechanism to maintain a core of trained staff to rapidly respond to changes in workload. [Issue #16, page 51]

APPENDIX A

PARTICIPANTS IN THE EVALUATION PROCESS

Participants in the Commission's evaluation of the licensing process included energy developers, utilities, state and local agencies, local community groups and members of the public. The mailing list for the process included 280 names. Those who attended the workshop or hearings held during the process and those who provided written comments are identified below.

Participants in the Commission's Workshop and Hearings on the Siting Process

Name	Agency
Allan Thompson	Attorney
Alvin Chan	Los Angeles Dept. of Water & Power
Bill Woods	Calpine Corporation
Bob Musseter	Member of the Public
C. Ouye Jr.	SMUD
C.J. Edens, Jr.	Associated Builders & Contractors
Carolyn Baker	Edson & Modisette
Dan Mostats	Operating Engineers Local # 3
Dennis Champion	Elk Hills Power
Dennis Newman	Occidental of Elk Hills
Dill DiCapo	Livingston & Mattesich
Donna King	Member of the Public
E. Varanini	Livingston & Mattesich
Eileen M. Smith	Solar Development Cooperative
Eva Harvey	Californians for Renewable Energy
Fay Chu	Los Angeles City Attorney
Frank Herrea	Operating Engineers Local # 3
Greg Fuz	City of Morro Bay
Jan Sieving	Occidental of Elk Hills
Jeff Harris	Ellison & Schneider, L.L. P for Calpine
Jeff Miller	Cal-ISO
Jeremy Rowland	URS Greiner Woodward Clyde
Jerome Burke	Yuba City Land Owner
Jesse Frederick	WCI
Jim Adams	California Energy Commission
Joan Joaquin-Wood	Sutter County Land Owner

Joe Rowley	Sempra Energy
John Braun	ABC Central California Chapter
John Grattan	Grattan & Galati
Joseph Paul	Dynesy
Karen Edson	Edson & Modisette
Kerry Willis	California Energy Commission
Kim Heinz	Southern Energy Inc.
Loreen McMahon	Western
Manuel Alvarez	Southern California Edison
Marc Joseph	Adams Broadwell Joseph & Cardozo
Mark Lieberman	Los Angeles Dept. of Water & Power
Mark Seedal	Duke Energy North America
Marty McFadden	Three Mountain Power
Mike Murphy	Member of the Public
Pat Fleming	Sempra Energy
Peter Okurowski	California Environmental Associates
Richard Hyde	Duke Energy
Rick Simon	ENSR
Robert F. Williams	WTA
Robin Larsen	Cal-ISO
Sean O'Donoghue	Operating Engineers Local # 3
Shauna Nauman	City of Morro Bay
Steve Cohn	SMUD
Stuart Wilson	CMUA
Stuart Husband	SMUD
William Garbett	Member of the Public

Individuals Who Submitted Written Comments on the Licensing Process

Name	Agency
Alan Ramo	Southeast Alliance for Environmental Justice
Derica Moore	Edson & Modisette, for the Independent Energy Producers Assoc.
Dian M. Grueneich	Grueneich Resource Advocates, for the City and County of San Francisco
Ellen Sturtz	San Luis Obispo Resident
Emilo E. Varanini, III	Livingston & Mattesich Law Corporation for Southern Energy Delta, LLC
Eva Harcey	Californians for Renewable Energy

Gary Ledford	Apple Valley Resident
Issa Aljounay	San Jose Resident
Jeffrey D. Harris	Ellison & Schneider, L. L. P., for Calpine
Jerome Burk	Yuba City Land Owner
Jim and Marcella Crockett	Burney Resource Group
Joan Joaquin-Wood	Sutter County Land Owner
Joe Hawkins	Community Health First
Mark D. Patrizio and John T. Guardalabene	Pacific Gas and Electric Company
Michael Boyd	Californians for Renewable Energy
Michael Stanley-Jones	Green Party of Santa Clara
Richard Bilas	Public Utilities Commission
Robert Garbett	Member of the Public
Robert Mussetter	Member of the Public
Robert W. Schultz	City Attorney, City of Morro Bay
Robert F. Williams	Williams Technical Associates
Ronald D. Rempel, Deputy Director	California Department of Fish and Game
Scott Scholz	Santa Teresa Community Action Group
Steven Adams	Department of Fish and Game
Steven M. Cohn	SMUD
Steven Kelly	Independent Energy Producers
Stuart E. Wilson	California Municipal Utilities Association

